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CENSORSHIP IN INDIA

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With Special Reference to
The Satanic Verses and *Lady Chatterley's Lover*

GIRJA KUMAR

HAR-ANAND PUBLICATIONS
in association with
VIKAS PUBLISHING HOUSE PVT LTD

Z 658 .J4G57 1990

VIKAS PUBLISHING HOUSE PVT LTD
576 Masjid Road, Jangpura, New Delhi

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Printed at Sanjeev Offset Printers, New Delhi.

Preface

Book censorship in India raises basic fundamental issues of ethical orientation. Books have been banned in this country for reasons of state, religion and sexuality. Religion has been the most sensitive subject as witnessed by the instance of Salman Rushdie's *The Satanic Verses.* The proverbial storm in the cup of tea has subsided.

The fundamental issue of religion being subject to scrutiny can not be wished away. There is also need to be reminded that the great classic *Lady Chatterley's Lover* by D.H. Lawrence continues to be banned in India. The recent raising of ban upon the import of Chinese literature has come about due to the reasons of state. The Indian intellectual community has proved to be effete in all such matters.

It would be wrong to lay all ills at the door of the State. The most insidious form of censorship has to do with the mind. It can be so subtle that it is in danger of being overlooked. Religious fundamentalism raising its head all over the country is a direct challenge to literary and cultural freedoms, which indeed constitute the very foundations of a thinking society.

The insiduous instances of "the censorship of the mind" turn up practically everyday. It is only recently that the Punjab University decided to withdraw recognition from Chaman Nahal's Sahitya Akademi award-winning novel 'Azadi' as prescribed textbook at undergraduate level for the charge of obscenity. Similarly there has been a hue and cry raised against Prof. Bhikhu Parekh among members of the Indian community in England for writing about the sexual mores of Mahatma Gandhi.

The poor professor has been termed as "the second Rushdie". In the words of Prof. Bhikhu: "He was concerned to explore the

innermost limits of self-control, to transcend bodily consciousness and regain childlike innocence, and to mobilise all his energies for the cause of Indian regeneration. Gandhiji's experiments had rare grandeur and spiritual depth and were an earnest of his almost superhuman moral courage".* No comments are called for.

Not long ago, Amrita Pritam, the distinguished Punjabi and Hindi *litterateur,* earned the ire of many for writing a poem in honour of Guru Nanak's mother and her birth pangs in her poem *The Annunciation:*

My October is auspicious
My being is blessed
The fire in my womb is spinning itself into flames
My body lights up like a candle
Its wick is touched up by fire
Send for Earth, The mid-wife
I am having first birth-pangs**

Such instances can be multiplied. Such challenges to the freedom of literary expression have practically no response. There are yet no book burners in the country. The stage shall be reached soon in the absence of any counterveiling forces.

The present book shall have achieved its objective, if the concerned individuals and institutions begin to think, react and respond on the right lines. There is need for codification of right to literary expression in the chapter on Fundamental Rights in the Constitution of India. The time is also ripe for challenging the ban on *Lady Chatterley's Lover* by filling a public interest petition in the Supreme Court. The present work provides just the groundwork for enabling the same.

GIRJA KUMAR

**Sunday Times,* Oct. 29, 1989

***Pritam, Amrita, *A Slice of Life,* Vikas Publishing House Pvt Ltd, Delhi, 1990, pp. 48-52.

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FAUST: Comfort and quiet! – no, no! none of these
For me-I ask them not – I seek them not. If
ever I upon the bed of sloth. Lie down and
rest, then be the hour in which I so lie down
and rest my last of life. Canst thou by falsehood
or by flattery Delude me into self-complacent
smiles, Cheat me into tranquility? Come then,
And welcome, life's last day – be this our
wager.

MEPHISTOPHELE: Done

FAUST: Done, say I: Clench we at once the bargain.
If ever time should flow so calmly on, Soothing
my spirits in such oblivion. That in the pleasant
trance I would arrest And had the happy
moment in his course, Bidding it longer with
me . . . . Then willingly do I consent to perish

– From Geothe's *Faust*

Section I

Trials and Tribulations of Salman Rushdie

Chapter I

Religion and Censorship

A0 INTRODUCTION

It is not merely coincidental that Salman Rushdie's novel *The Satanic Verses*[1] and the film based on Nikos Kazantzakis' novel *Christ Recrucified*[2] were banned about the same time. It is also not the first time that books have been banned in India. Both these novels are about the sensitive subject of religion entailing blasphemy and heresy. It was for nothing that the Catholic church was maintaining for centuries altogether *Index Librorum Prohibitorum*. The Index almost reads like a parade of great classics, which included religious works, philosophical and scientifict treatises and literary works considered to be irreverent and pornographic The Vatican discovered about 20 years ago that the ban never worked and it quietly stopped doing so.

A01 RELIGIOUS SENSITIVITY

Books have been banned throughout centuries for the reasons of state, religion and sexual morality. The Meese Commission report[3] on pornography is said to be the last word on the subject. The Bombay High Court and the Supreme Court have imposed a ban at one-time D.H. Lawrence's *Lady Chatterley's Lover* controversial novel. The novel does neither raise any whimper, twitter or titilation today. Sedate is the work for it. Similarly political censorship has become less rigorous except in the totalitarian States. Even those have begun to relax and are almost apologetic about it. Religion is

another cup of tea in this age of mass communication. Religious fundamentalism and mass media are proving to be a lethal combination. Religious thought on being defensive is ferocious in its rear-guard action.

Bhikhu Parekh has summed up the dilemma appropriately in his critical piece on Salman Rushdie's book. In his view "Religion represents the realm of the sacred *par excellence* and calls for an extremely delicate and sensitive handling . . . . We have taken centuries to learn how to explore sexuality in literature without becoming either puritinical or pornographic. Religion requires a great deal of sensitivity".[4] Bhikhu Parekh raises the larger question. The dilemma and opportunities confront all creativity and the stakes are automatically raised when the novel deals with the personalities of the great religions of the world.

A02 MAGIC REALISM

Prophet Mohammed and Jesus Christ, their life styles and thought, have come under scrutiny from time to time. The fat is in the fire when the subject is treated with a certain degree of irreverence, and, besides, the novelist claims to know his characters (especially great historical personalities) better than themselves.

Salman Rushdie was dealing with political events and political figures of Pakistan and India in his previous two novels *Midnight's Children* and *Shame*. In the *Satanic Verses* he comes to grips with a religious prophet who is historically known figure. The methodology of "Magic Realism" (borrowed from Latin American writers like Gabriel Garcia Marquez and Jorge Luis Borges) has been consciously adopted by Salman Rushdie. It has enabled him to amalgamate actual happenings, fantasy, fable, comedy and satire in the study of early Islam.

A03 PROPHET UNDER ATTACK

He was naive when he went on repeating immediately after his novel was published that *The Satanic Verses* was not about Islam but about "migration, metamorphorsis, divided selves,

love, death, London and Bombay".[5] It is all that and plus more. He fantasizes about the doings of a great prophet by providing a thin veneer of fiction. The result is predictable "When a prophet is treated in a supercilious, dismissive or crude manner, what is at stake is not his honour–for he is dead and too big a person to be affected by insults. What is really at stake is the sense of self-respect and integrity of those living men and women who define their identity in terms of their allegiance to the prophet".[6]

The book has also aroused racial memories of hostility between Western and Islamic civilizations. Surely Salman Rushdie did not intend to bring about such a situation. The book has undoutedly created a history of sorts.

A04 CHRIST RECRUCIFIED

Since this chapter is essentially about Saman Rushdie's book, certain amount of comparison with Nikos Kazantzakis' novel *Christ Recrucified* is called for creating a perspective about the controversial novel. Doubts have been raised about the Christian dogma by Kazantzakis in his book, which could be undoubtedly considered as blasphemous. Kazantzakis questions the dogma through one of his characters who says, "What a mystery the world is, what a great mystery . . . . You can't tell the good God from the Devil . . . . There's many times, God forgive me, they look first the same".[7]

Jesus Christ is however not subjected to critical scrutiny in the novel. The main character of the novel Manolios, a shepherd by profession, emulated Christ so much so that he tries to be one with him and "Suddenly all seemed clear to him, Christ became a warm and human body, coming down upon the earth for men of simple heart, and now onwards Manolios followed Christ any effort, step by step behind Him, from His birth all through his life".[8] There is a quality of mercy about Christianity like Buddhism which pervades the novel.

A1 INDIVIDUALITY OF RUSHDIE

Salman Rushdie is a study in contrast. His individuality as a distinguished author is so different. He would not be Salman Rushdie otherwise. He belongs to another milieu. Present is the age of scepticism and the loss of faith. He comes from another environment. Irreverence is his strong point. He is writing about Islam and the God of the Old Testament.

He touched upon the raw by questioning the dogma. Islam does not permit speculation, scepticism and the questioning of faith. Its strong point lies in its ruthless logicality. In the words of Salman Rushdie, "I write from a secular point of view about religion and revelations and *The Satanic Verses* is in some ways concerned with the consequences which flow from the engagement of a secular sensibility with the nature of religious belief and, indeed, revelation".[9]

He is competent to write on the subject by his training and background. He wrote a thesis on the early rise of Islam. The title of the same: *Mohammad, Islam and the Rise of the Caliphs* (Cambridge University). He has dared to cross the Rubicon and thereby he has to be there to take the consequences.

In nutshell, Salman Rushdie has been attempting to search his roots through his writings by fashioning historical events and personalities in his fictional image. India and Islam have been his pet concerns in his writings. Those have been his magnificent obsessions. No wonder, he confessed in an interview to a British journalist, "As one reaches middle age one needs to cement connections. It's a country (India) I am still very close to". Something went wrong somewhere.

A2 RIGHT TO FREEDOM OF EXPRESSION

In his open letter to Prime Minister Rajiv Gandhi, Salman Rushdie has asserted that "The right of freedom of expression is at the very foundation of any democratic society".[10] The whole controversy raises the larger issue of artistic freedom and the right of the writer to fantasize about human existence.

The questions about creativity *vs* licence and poetic licence *vs* censorship are involved. The novelist and the poet especially are expected to look beyond the horizon by adding significance ("by imagining, and conveying to us, more contexts for them than we could imagine for themselves") to purely mundane matters. At their best, they may reconstitute the reality to suit their conceptual framework. Historical figure can be no exception from the rule.

A21 CREATIVITY AND DISSIDENCE

Creativity *ipso facto* means departure from the norm. It is born of the dialectical relationship. Indeed the great religion of Islam too is born of the same dialectical situation. The best literary figures have also happened to be anti-establishment. Scepticism is the very essence of quality writing. Writer exists, for the essential purpose of establishing that the emperor has no clothes, to satisfy his own ego, to address the audience directly and provide a mirror to the emperor himself. Salman Rushdie's latest novel should be judged in the same context.

A3 THE CREDO

It would be unfortunate to turn the controversy into a battle between the artists and the religious establishment. Joan Smith, the British novelist, has summed the dilemma appropriately: "Into this situation comes the artist. She or he is in exactly the same position as the sceptic in the fairy tale, for it is the job of the artist to puncture illusion-to point out, in the face of majority opinion, that the emperor isn't wearing new clothes, that he is actually naked. This is not to say that artists do not create their own mythologies–they are human after all--but the impulse behind art is the search for a kind of reality which is closer to the truth than that which exists at any given moment. The artist in an age of change is, a disrupter of the social order, and, since change is essential, in our monstrously unsatisfactory world–essential, if we are to survive–the artist's freedom to express unorthodex views, is the *sine qua non* of everyone's survival too".[11]

Chapter 2

Censorship and Conscience

B 0 CENSORSHIP IN INDIA

There is no uniform code or law for censorship of books in India. Resort is often taken to banning of books under various subterfuges. A mere notification in the Gazette of India is considered sufficient for the purpose. The practice adopted during the days of British India continues to be in vogue with a few modifications. There is no board established by the Government to consider cases for censorship, invite public suggestions or hold public hearings with the presence of authors, publishers, librarians or representatives of civil liberty organisations. There is no scope for review or revision of the order. No justification is called for the unilateral decision.

The authority invoking order for censorship is faceless and thus it is not subject to any public scrutiny. Public debates are also a rare occurrence. There are few occasions when the act of censorship is challenged in the court of law. It is surprising, considering the fact that the courts tend to take a liberal view of the situation. Only a few cases have been fought in the courts of law.

The judgements in many cases have gone in favour of the aggrieved parties, that is the authors, publishers and distributors. Above all, those instances have been triumphs for the intellectual India without it being aware of it. The academic/intellectual elite of India are in the position of Molière's famous character who suddenly discovered late in his life that he had been speaking prose, of course, without knowing about it.

B 01 CASE STUDIES

The most famous was the decision of the Lahore High Court in the Rangila Rasul acquitting Pandit Chammupati for his pamphlet *Rangeela Rasool.* The publication was considered highly offensive to the person of Prophet Mohammed and led to country-wide agitation by Muslims. The author was reluctantly acquitted because it could not be established that the pamphlet tended to necessarily promote feelings of enmity and hatred between different classes under section 153 A. That the section was suitably amended and the author was murdered through stabbing subsequently is another matter. The Bombay High Court approved the ban on the import and sale of D.H. Lawrence's novel *Lady Chatterley's Lover* in 1962. The Supreme Court confirmed the decision of the High Court in 1969. The overall liberal tendencies of judicial body need to be tested in other cases. Even *Lady Chatterley's Lover* should be up for review.

B011 POLITICAL CENSORSHIP

Surprising that no one had thought it fit to challenge the ban on import of political literature from China in force for well over a quarter century. It was no less a sad commentary on the Sinologists of this country. The ban was recently lifted is another matter and no credit to our academic sensibilities. None has also bothered to confirm the fact of such publications having only a limited market in this country. The only losers were the limited number of scholars and specialists in the country.

B1 CHALLENGING THE BAN

That the ban on Salman Rushdie's book may be challenged in the court of law is a fit subject for consideration. Such a step is to be viewed as a matter of principle without going into the merits of the book. Voltaire's dictum, that he shall fight his

apponent tooth and nail, and, at the same time, defend him unto death to freely express or preach his views, needs to be asserted once again, in defence of fundamental rights in India. One needs to be reminded of the classic statement of Justice Chinappa Reddy in the National Anthem case: "Our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practices tolerance; let us not dilute it". The Indian Constitution does not provide any special privileges for artists/authors in the chapter on fundamental rights, but there is sufficient margin under the existing laws to seek proper retribution.

The case fit for court review happens to be Salman Rushdie's book *The Satanic Verses* (1988). India was first to ban the book followed by practically all the Muslim countries of the world. Government's decision to ban the book was contained in a circular dated October 5, 1988 issued by the Under Secretary to the Government of India and conveyed to all collectors of Customs and of Central Excise. The decision is based on a notification dated September 22, 1956. Curiously the notification of the Finance Ministry banning the book is almost apologetic. The ban did not detract from the literacy and artistic merits of the book.

B11 CASE FOR PROSECUTION

The ban was imposed at the instance of Syed Shahabuddin, Member of Parliament and his political associates. He had no compunction in admitting that he had not read the book. He was at his political best when he asserts, "Yes, I have not read it, nor do I intend to. I do not have to wade through a filthy drain to know what filth is . . . for me, the synopsis, the review, the excerpts, the opinions of those who had read it and your gloatings were enough".[12]

Much more urgent indictment has been presented by the distinguished African intellectual, Ali A. Mazrui of Salman Rushdie. He has no compunction in calling *The Satanic Verses* as treason. His arguments are based on the premises that the

Quran is the ultimate constitution of the community. Salman Rushdie's blasphemy lies not in implying that the Quran is the work of Mohammed (which is blasphemy enough for a believer), but seeming to suggest that it was inspired by the Devil.

Mazrui expects all his co-religionists to stand and be counted in defending the Quran as their own ultimate fundamental law. Arnold Toynbee has attributed two special characteristics to Islam, namely, belief in one God and the law. Salman Rushdie appears to have violated the two injunctions in the eyes of Ali A. Marzui and his kind of dogmatists in his novel *The Satanic Verses*.

The Government of India have obviously imposed the ban as a matter of expediency by adopting the line of the least resistance. The fundamental rights of the individual are sought to be glossed over to thwart potential threats from religious fundamentalists. The case for prosecution is best presented in the words of Syed Shahabuddin who laces his clever arguments with a whole dose of polemics and through his appeals to the basest instincts: "One would like to ask the critics of the ban, whether it would be in the national interest, whether it will promote the process of national integration or aggravate the existing alienation if the government of the day remained a silent spectator to what the Muslim community, as a whole, was bound to consider an act of vilification, an exercise in blasphemy and an unpardonable insult to their religion. It would be nothing short of criminal negligence on the part of the responsible government".[13] The battlelines have unfortunately been drawn on communal lines.

B111 FUNDAMENTALISTS ON DEFENCIVE

The Muslim intellectuals have either sought to support the ban or refused to come to the defence of Salman Rushdie, especially after Imam Khomeini's *fatwa* dated February 14, 1989: "I inform the proud Muslim people of the world that the author of *The Satanic Verses* book, which is against Islam, the Prophet and the Koran and all those involved in its

publication who were aware of the context have been sentenced to death". This was followed by the Teheran radio announcing a reward of a million US dollars to the assassin; an Iranian assassin would get 200 million rials plus martyrdom if he was killed in the attempt.

It is quite possible that Imam Khomeini must have been sufficiently incensed with irreverent treatment of Islam in *The Satanic Verses*. The unilateral judgement (in contravention of all norms of international law and religious tradition) must have been made secondhand because the Imam knows no English.

The real reason for passing the death sentence lies in references to 'a bearded and turbaned Imam from his homeland' in the book. Salman Rushdie's following assertion should be provocative enough for Imam Khomeini: "After the revolution, there will be no clocks; we will smash the lot. The word will be expunged from dictionaries. After the revolution, there will be no birthdays. We shall be born again." The Rabelian satire (or his 'acidic satire' to employ the phrasealogy of Asghar Ali Engineer) of Salman Rushdie is intolerable enough.

B2 CASE FOR DEFENCE

The controversy about *The Satanic Verses* has indicated a yawning gap in the perspectives of Muslim and non-Muslim intellectuals. The respected newspaper *The Hindu* calls the ban on the book as a "philisitine decision" and *The Indian Express* called it an instance of "thought control". The editorials in newspapers express the majority opinion among the thinking people in the country. It is in line with the world view excluding the Muslim World.

There are, also muted opinions, in defence of the right of the artist to express himself freely, without any social inhibition or intervention, in the Islamic world. A Pakistani intellectual from Karachi who chooses to remain anonymous, expresses his dilemma in a 'Letter to the editor': "I weep for my daughter, just four-and-a-half years old, already being taught to

recite the affirmation of faith and learning religious dogma by rote at school. I want to tell her what I believe but don't want her to be the victim of ridicule by her peers–or worse, should she repeat such hereby publicly".[14]

Asghar Ali Engineer displays a rare quality of mercy ('after all "Islam" means peace') when he approvingly quotes an eminent Egyptian biographer of the prophet who wrote about him: "Oh, the beauty of pardon and forgiveness on the part of the mighty and powerful! How great is the soul of Muhammed which arose above hatred and above revenve, which denied every human feeling and ascended to heights of nobility man had never before".[15] The words are in line with the *New* and not *Old Testament*.

Salman Rushdie nearly came to seek pardon of Khomeini and other fundamentalists by expressing regret over the hurt caused to the community. He was forced to acknowledge the need "to be conscious of the sensibilities of others". Mercifully, the expression of regret was haughtily rejected by the majestic and all-mighty Khomeini.

The rough treatment of Salman Rushdie by the fundamentalists raises much larger issue of principles affecting not merely him but the totality of the intellectual community. The British novelist Melvyn Bragg has rightly stated that "Rushdie has created a global community of authors. It is difficult to think of any writer who has provoked such a closing of ranks".[16] He is now a symbol. He has no longer the freedom to go back. He has promises to keep.

B3 CONSCIENCE THE ONLY CENSOR

The basic principle involved is the freedom of thought and the right of the artist to free expression. It is enshrined in the Indian Constitution and has the sanctification of centuries of human struggles behind it. The only sanction that the writer should adhere to is his conscience. Bad writing shall not be acceptable in the long run. There is danger as in Gresham's Law of bad currency driving away good currency, but such

risks are worth taking in all democratic societies.

A healthy and vigorous system has the inbuilt capability to reject unhealthy tissues and provide the essnetial environment for healthy tissues to survive and grow. This is no less true of literature that survives rigorously when uninhibited by outside factors.

The issue at present is not whether Salman Rushdie is right or wrong. In fact, he is culpable of many *faux pas*. He can be faulted on several grounds. The issue is the autonomy of a writer to express his views freely.

B31 SECULAR INDIA

Such a problem assumes urgency in secular India, whose very foundations are based on harmony amidst diversity. It is not difficult to establish that all religions are critical of each other and thereby culpable of hurting the feeling of different religious communities.

Similarly a dialectical situation prevails in the realm of arts and ideas. Contradiction is the primordial law of nature. It applies to various cultures, communities and religions with equal force. In a secular society, censorship is best avoided and in the wise words of Harold Laski," "Qualifications for the exercise of power and test for its application are, almost necessarily, non-existent".

Admittedly the reversal of the present stance by the Government of India is an insurmountable task. The sentiments of a large minority have been allowed to be aroused to volatile proportions on a sensitive matter. The wisdom however lies in taking a principled stand because of other and varying ramifications of an unprincipled or compromising stand. The path of truth is always hazardous. The wise men however always opt for such solutions.

Chapter 3

Tradition of Censorship in India

C0 BRITISH LEGACY

The mind that decided to ban *The Satanic Verses* was the same that decided upon the banning of books in post-independent India. It is the faceless bureaucrat with his legacy in British India who performed the dirty operation. He works under the directive of political bosses who are no votaries of the reading society (Nehru and political leaders of his generation were a rare exception).

The political bosses are primarily concerned with protecting their political interests. They are ever ready to be subjected to pressures from sectional interests as a matter of principle. They are naturally disinclined to take principled stands in matters of conscience; those are really marginal to their main interest of holding on to political power.

The bureaucrats are usually reluctant to stand up to their political bosses. In fact, they have developed the unethical tendency of justifying on paper the decisions taken by political bosses under political pressure. Many a time the decision may not have been subjected to any sectional pressures.

The decision may have been taken in anticipation of avoiding potential trouble from sectional groups. It may have been done at the instance of an influential individual. Such is the case with regard to *The Satanic Verses*. It was banned at the instance of two Muslim Members of the Parliament, Syed Shahabuddin and Mr Khurshid Alam Khan.

C1 CASE STUDIES OF CENSORSHIP

Books have been banned under the false notion of national pride. *The Atlas of the Times* (decidely the best atlas in the world) was banned by the Custom authorities for long because the boundaries of India as shown in the atlas were not in alignment with official boundaries. In actuality, the long hand of the Home Ministry operates behind all such decisions.

They are instances where the censorship of books lands the government in piquant situations. Such is the instance of Dr B R Ambedkar's *Riddles of Hinduism.* The decision led to a tug of war between the sectional interests of Shiv Sena and Dalits placing the Government of Maharashtra in the invidious position. It is as well that we take up a few cases involving censorship to delineate the pattern that led to the banning of *The Satanic Verses.*

It is not easy to compile a list of banned books in India. Books have been banned for the following reasons on the basis of information readily available.

1. Obscenity;
2. Hurting of religious feelings;
3. Questioning the sovereignty of State;
4. Adverse reporting of India, and
5. Relations with other countries.

C11 CATEGORIZATION

Books banned in post-independent India have been categorized under above headings. Many of the titles banned in India about which information is readily available have been banned under the Indian Customs Act, 1962. A complete listing of books banned/censored under various legislative acts is hard to compile. The information is undoubtedly buried in the files of the Internal Security Division, Ministry of Home Affairs (Government of India). This list (however incomplete) should provide a backdrop to the banning of *The Satanic Verses.*

LIST OF BANNED BOOKS

I Obscenity

	Nights of Paris (1952)
Kinsey (Alfred) and others	Sexual behavior in the human male (1953)
	Sexual behavior in the human female (1953)
Lawrence (D.H.)	Lady Chatterley's Lover (1958)
Edwardes (Allen)	The jewel in the lotus (1968)
	Inside Linda Lovelace (1976)

II Hurting Religious Feelings

Thomas and Thomas	Muhammed (1956)
Menen (Aubrey)	The Ramayana (1957)
Wolpert (Stanley)	Nine hours to Rama (1962)
Frishler (Kurt)	Ayesha (1963)
Steward (Desmond)	Early Islam (1975)
Koestler (Arthur)	The lotus and the robot
Bharati (A)	The ochre robe
Ram Swarup	Understanding Islam through Hadi (1983)
Rushdie, Salman	The Satanic Verses (1989)

III Questioning the Sovereignty of India

	The Kashmir dispute through neutral eyes (1949)
	Behind the iron curtain in Kashmir (1949)
Beg (Aziz)	Captive Kashmir. (1958)
Lawrence (Alan)	Chinese Foreign relations since 1969 (1978)
	The Altas of the Times

IV Adverse Reporting on India

Campbell (Alexander)	The heart of India (1958)
Naipaul (V.S.)	Areas of darkness (1970)
Segal (Ronald)	Crisis in India (1970)
Edwardes (Michael)	Nehru–a political biography (1975)
Bettleheim (Charles)	India independent (1976)

V Relations with Other Countries

Hagen, (Tony)	Nepal (1963)
Le Ray (Burt)	The evolution of the British Empire and Commonwealth from the American Revolution (1969)
Fan Asid Chu	A struggle between two lines. (1969)
Wynne, (Grenville)	Man from Mascow (1970)
Lawrence, (Alax)	Chinese foreign relations since 1969 (1978)

N.B. 1. The year in bracket is the one in which the book was banned in India.

2. Most of the information about titles banned has been culled from Mookerjee, T.P. *Commentaries on the Customs Act*. 4. Edn. Delhi Law House, 1987.

The earliest omnibus ban on import of books was pertaining to publications from China, North Vietnam and North Korea. In the early seventies ban on import of books relating to international relations from Taiwan was imposed during the Emergency. It applied to the import of any book, periodical, leaflet or other document questioning the frontiers of India.

Periodical publications have also been the victims of the censorship onslaught. Censorship has been imposed on periodical publications including *Peking Review*, Peking (1962), *Korea*

News, Pyongyong (1962); *The Muslim World*, Karachi (1964); *Goan Voice*, Nairobi (1964); *Eastern Horizon*, Hong Kong (1968); *Revolution*, Paris (1968); *The Call*, Peking (1971) and *The Vanguard* (1971).

There have been a variety of reasons for superimposing censorship with the slip of the Internal Security Division (Ministry of Home Affairs) showing. Obscenity and the hurting of religious feeling have been minor considerations. The main consideration in imposing censorship has been the security considerations. Relations with Pakistan and China have been the preoccupation. The recent relaxation of political relations with China has resulted very quietly in the lifting of ban on the import of the periodical *Peking Review*.

The only aberration from the norm was the Emergency period when well-respected scholars like Charles Bettleheim and Michael Edwardes received the axe. D.H. Lawrence's *Lady Chatterley's Lover* officially continues to be under the taboo sanctified as it is by the court decisions. Copies of the book however continue to be on sale in bookshops in Delhi and other centres. Thanks are to be tendered for little mercies like the censorship authorities turning blind eye by blinking at the circulation of the banned literature. There are many uses for bureaucratic inaptitude in adverse circumstances. There are no knocks at the door as in totalitarian states.

C12 FRUITLESS EXERCISES

The point to note is that the books banned have a limited reach in the country. These were likely to be stocked in a few libraries in metropolitan centres and major academic institutions. Much less number of readers were likely to notice them and there was a remote possibility of their being the subject of debate in the press. The history has also proved the censoring authorities wrong. Imagine the banning of Mulk Raj Anand's *Kama Kala*, a great photographic representation of Indian sculpture, on account of obscenity. What is depicted on the great temples of Khajuraho and Konark was sought to be

obliterated from the mind of the discerning public likely to notice the book.

C121 PORNOGRAPHY

Similarly it is inconceivable for anyone to ban *The Kinsey Report* charging the modern classic on sexuality with obscenity. The same was the fate of D.H. Lawrence's *Lady Chatterley's Lover* for mentioning four-letter words somewhat squeamishly. Four-letter words are the stock-in-trade of all contemporary novelists with some distinction.

C122 POLITICAL LITERATURE

The Government of India has been very sensitive in dealing with books critical of Moscow and no less sensitive in dealing with books supporting the Chinese line on the border dispute. The banning of literature from China and sympathetic to China has resulted in Indian sholars and knowledgeable public being denied access to documentation essential for understanding of the problem. During the Emergency, every copy of Michael Edwardes' Political Biography of *Nehru* and Charles Bettleheim's *India Independent* were banned for import in 1975 and 1976. Stanley Wolpert has been subjected to even-handed justice by India and Pakistan. While his *Nine hours to Rama* (about the assassination of Mahatma Gandhi) is banned in India, his biography of Jinnah is banned in Pakistan, for his fondness for pork and drink. There can be no other lesson to be drawn. It is counterproductive to ban books, especially with some literary merit.

The enlightened democratic countries recognized long ago that the hostile literature is best tackled by counter literature on the subject. The most outrageous has been the banning by distinguished authors like Arthur Koestler and V S Naipaul. The roll of honour has been joined by the beleagured Salman Rushdie. *The Satanic Verses* was banned under section 11 of the Customs Act (1962) "as sections of the book will offend

the religious sentiments of the people". By this standard, most of the religious literature shall stand banned. These are many more examples of the functioning of the invisible hand.

C13 SAGA OF CENSORSHIP LAWS

C13 1 SEA CUSTOMS ACT (1962)

The Section 11 of Customs Act (1962) provides for banning through import and export of books through Gazette notification of such titles as fall under the following prohibited categories:

1. The maintenance of the security of India;
2. The maintenance of public order and standards of decency or morality;
3. The fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;
4. The prevention of the contravention of any law for the time being in force;
5. Any other purpose conducive to the interest of the general public; and
6. The prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign state or is derogatory to national prestige.

There are also other clauses enumerated in section 11 marking it the most comprehensive document anticipating all kinds of inconceivable situations. The above clauses are concerned with the censorship of books. The Customs Act is obviously a badly drafted document, which needs to be challenged in the Court for every book banned under the law to test its validity.

C13 2 INDIAN PENAL CODE

The Indian Penal Code supplements the Sea Customs Act

(1962) in censorship of books in India. Section 153-A of the Code of Criminal Procedure penalises any person whose writings promote disharmony and feeling of enmity, hatred or ill-will between *inter alia* different religious groups or communities.

Section 295-A of the Indian Penal Code is the major instrument for banning of literature critical of religions, religious leaders and religious practices. The clause has been the subject of constant interpretation by the courts.

It needs to be scrutinized carefully in the light of the situation created by *The Satanic Verses*. The text of Article 295-A (IPC) reads as follows: "Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words either spoken or written or . . . otherwise, insults or attempts to insult the religion or the religious books of that class, shall be imprisoned (for 3 years) . . . or with fine . . . or both." It is to be recalled that Syed Shahabuddin has been threatening Salman Rushdie with the enforcement of Section 295-A, were he to set his foot on the soil of India, the country of his birth. Thanks heaven, he can remain a free bird in Great Britain, because the British Law of blasphemy is limited to Christianity.

C133 OTHER INSTRUMENTS OF TORTURE

Law is said to be an ass. It is for one thing characterised by its mulishness and stubbornness. It is also characterised by its deliberateness. The bureaucrats who operate the laws of the country have all these qualities and more. There is no composite law of censorship in India. Various acts are employed at various times to achieve the purpose of censorship. In fact, it becomes next to impossible to pin him down to any position at any particular moment of time.

The escape is facilitated, because pinning down of positions is near impossibility. It is thus necessary to comprehend the legal position about censorship in India by taking a comprehensive view of the overall situation. Censorship has been

employed in India since the British times, through the notorious The Press and Registration Books Act (1867).

C134 HISTORY RECAPITUTED

The present position with regard to instruments employed for censorship in India is as follows:

1. The Press and Registration Books Act, 1867;
2. Official Secrets Act, 1923;
3. The Young Persons (Harmful Publications) Act, 1956;
4. The Post Office Act, 1958 (Section 20);
5. The Obscene Publications Act, 1959;
6. The Customs Act, 1962 (Sections 11 and 18); and
7. The Code of Criminal Procedure, (1973) Section 95

read with Section 124 A	(sedition),
Section 153 B	(promoting group hatred),
Section 153	(impunging the loyalty of a group to the country),
Section 292, 293	(obscenity),
Section 295A	(deliberate and malicious act to outrage religious feelings or to insult religion or religious feelings).

Generally resort is taken to the Customs Act, 1962 and Section 295, A for banning of books in India. The Obscene Publications Act, 1923 has been employed against obscene books intended for children. It may be desirable at this stage to discuss at length the implications of two major pieces of legislation employed as draconian measures for censorship of books.

Surprising as it may seem, the fact remains that hardly any public debate has been initiated on the censorship. It is rare to recall when Parliament or other public bodies like organizations representing civil libertarians, librarians, publishers, booksellers and academicians may have discussed censorship.

C4 RELIGIOUS CENSORSHIP

Section 295-A was introduced by the Criminal Law Amendment Act (XXV of 1927) in the wake of the agitation following the acquittal decision of the Lahore High Court in *Rangeela Rasool* case. It may have a bearing on Salman Rushdie's book in future.

It is to be noted that the Select Committee in its report, while amendment to Section 295-A was under legislative consideration, observed that the essence of the offence is "that the insult to religion or the outrage to religious feelings must be the *sole*, or *primary*, or at least deliberate and concious intention".

Salman Rushdie has stated in extenuation of his position that he intended no insult to Islam or its Prophet in his novel. In his own words, "This attempt has been made in a spirit of artistic and human sincerity and Islam has certainly not been treated with either reverence or contempt in the novel".[17]

C4 1 INDIAN CONSTITUTION

Above all the legislation stands the Constitution of India. Article 19 deals with fundamental rights. It does not unfortunately deal separately with the rights of authors and artists. It affirms the freedom of speech and expression, which are subject to "reasonable restriction in the interest of, *inter alia*, "public order, decency or in relation to . . . defamation or incitement to an offence". The Indian Constitution is definitely restrictive when it comes to freedom of speech and expression. It does not seem to emulate the American Constitution in this respect.

The Indian Courts have proved to be less stringent in matters concerning censorship of books. The liberal tradition has been upheld and a corpus of interpretation has been cumulated, which are relevant for the present case under review. The select committee has already provided the lead by asserting that the insult to religions must be either sole or

primary criteria. In other words, hurting the feelings must be the primary consideration of the book. This can be established by the general tenor or treatment in the book.

C42 SUPREME COURT ON CENSORSHIP

The Supreme Court in its judgement of 1952 stated that "the general effect which the *whole* composition would have on the mind of the public". The public cannot be the general mass, who may not have the remotest connection with the book. The public in this context has to consist of the thinking public capable of reading, discussing, reviewing and criticising the book. The role of book critic is of primary importance in judging the book.

Chief Justice Hidayatullah speaking for the unanimous Court observed. "Our standards must be so framed that we are not reduced to a land where the protection of *the least capable* and *the most depraved* amongst us must determine what the morally healthy cannot view or need. The standards that we set for our censors must make a substantial allowance in favour of freedom".[18]

There are several other criteria laid down by the Supreme Court that are to be considered. The standing of the author, nature of the content and its potential clientele are important criteria.

C5 "THE SATANIC VERSES" IN PERSPECTIVE

Salman Rushdie ranks very high among contemporary English novelists. His *Midnight Children* was the recipient of the prestigious Booker prize for the best novel of the year. *The Satanic Verses* was shortlisted for the Booker prize this year. The most distinguished literary figures, artistes and public personalities have made public appeals in his defence. *The New Statesman Society* has issued a *festschrift* issue in his honour.

He is knowledgeable about Islam, having been born as

Muslim and having obtained a degree for his thesis on early Islam from Cambridge University. His is a serious work, which requires little scholastic knowledge of Islam to comprehend the basic theme underlying it.

In his own words, "Literature is where I go to explore the highest and the lowest places in human society and in the human spirit, where I hope to find not absolute truth but the truth of the tale, of the imagination and the heart. So the battle over *The Satanic Verses* is the clash of faith".[19]

The book makes a heavy reading and is thus not intended for popular reading. It is more like an intellectual treatise of philosophical proportions concerned with faith, scepticism and revelation in human history. It contains 546 pages and is priced at more than Rs 300. The book is thus intended for iconoclastic discussion in the privacy of drawing rooms, debating societies and class rooms. After all, Salman Rushdie deals with a historical subject.

In a similar situation, Bombay High Court has pronounced correctly in the case concerning Marathi Weekly *Shree*: "If such a contention is accepted a day will come when that part of history which is unpalatable to a religion will have to be kept in storage . . . . History and historical events cannot be allowed to be looked (upon) as a secret on the specious plea that if the history is made known to a person who is interested to know the history, there is likelihood of someone being hurt".[20] The Daniel has thus spoken!

Chapter 4

Salman Rushdie under Attack

D0 TACTICAL RETREAT

The Satanic Verses has been attacked viciously and unthinkingly at times. It has also been defended vigorously. A fairly large percentage of antagonists have performed their duty without referring to the text. The case for the prosecution and the defence must be considered in the textual context. This calls for the careful reading of the text in its entirely and various statements and writings of Salman Rushdie providing the rationale for the book after its publication, especially in response to the criticism of the novel.

There is enough documentation avaiblable that can be directly attributed to the novelist. There has been enigmatic silence on his part, subsequent to the sentence of death pronouncement of Ayatollah Khomeini. It must be purely for tactical reasons. Salman Rushdie is bound to come out of his shell sooner or later.

Apart from various statements that are attributed to him, the book itself provides the best or worst defence, depending upon the perspective from which it is reviewed. Certain nuances in utterances of Salman Rushdie can be noticed over a period of time. In earlier weeks, he seemed to assert his position aggressively. Subsequently the pressures must have begun to work on him. There may be certain amount of tactical retreat on his part to blunt the intensity of attacks by his antagonists.

Enconsed as he is in a secret hiding place, he may not be

updated on the real facts of the situation. He seems to have stood enormous pressures on his psyche rather well. His basic position on the book remains substantially unchanged. It is assumed that he must be working on a comprehensive reply after taking into consideration the criticism of his ideological position.

Ideological positioning has been on retreat in recent times due to the disrepute invited by the votaries of socialist realism upon their heads. *The Satanic Verses* seems to reverse the trend. Ideological positioning is obviously coming back to fashion. Salman Rushdie has a philosophy of life that governs his fiction.

D1 RATIONALE BEHIND THE BOOK

In order to comprehend the dimensions of *The Satanic Verses*, it becomes incumbent to understand the compulsions that motivated Salman Rushdie the novelist. For Salman Rushdie the novel is not merely for communication. It has a larger purpose. He seems to be a moral man concerned with larger issues of life. Those fascinate him. Fiction is his instrument for the same.

D11 GOLIATH *vs* DAVID

Scepticism is his strongest instrument. There is a childlike quality about his writing. There is a sense of wonderment, as well as considerable element of naivete. He would like to a generate a debate through his fiction about great historical issues with serious philosophical import. Islam is his major preoccupation of life. He would like to be a David to the Goliath. It is logical for him to get into trouble because he is attempting to knock at the door of a closed system.

The central preoccupation of his Salman Rushdie is to explore various depths of human nature by exposing the sham, thus achieving a measure of comprehension of the underlying reality. In his own words, "The real purpose of fiction . . . is to

explore ideas on which the human race rests itself. The question is, are there limits to those purposes, whether there are things that one should not do. Clearly there are limits but those limits, are very different for each individual writer. The issue here is the breaking of taboos".[21]

D12 EXPLORATION OF THE MIND

His is an exploration of the mind. Since he does not make any use of psychological analysis in his writings (subconscious does not make any explicit appearance), Salman Rushdie's is a philosophical exploration of a rational man. He is indeed more of a rational man than a philosopher.

Deep philosophy need not be explored in his writings. His major concern in the book is with the nature of revelation. Religious faith is not for him but to him 'revelation seems to be genuine in the context of Islam'.

Besides exploration of the mind, his other article of faith seems to be scepticism. *The Satanic Verses* as a piece of fiction is "concerned with the consequences which flow from the engagement of a secular sensibility with the nature of religious belief and, indeed, revelation."[22]

Consequently his earlier statement that the novel is primarily concerned with the dilemma of migrants and not Islam is not correct. Islam is the major preoccupation. All the rest is a mere veneer.

D2 DOGMA UNDER ATTACK

He is gradually groping towards a situation in which he is attempting to question the dogma of Islam. Faith for the faithful is not subject to question. He is attempting to question faith in the context of Islamic societies. To him, the major concern of his book is "the eternal dispute between the secular and religious views of the world". It is specious of him to argue further that one does not "have to know anything about Islam to understand the Jahilia Chapters".[23]

D21 JAHILIA CHAPTERS

The Jahilia Chapters are indeed the heart of the novel, because they deal with the place of revelation and its genuineness in religion, especially in the context of controversy in Islam about so-called Satanic Verses. The fictional element is merely a veneer and only a fig leaf to highlight rather than hide the reality.

It is not possible to comprehend the essential character of the novel without acquaintance with the developments in early Islam. There are numerous characters in the novel who in reality existed. Mahound (an unfortunate expression) of the novel is substantially patterned after happenings in the life of Prophet Mohammed.

The use of the perjurious language in the context of historical and religious leaders hurts, because the same had been used as an expression of contempt by Christendom for centuries. Such licentiousness in expressions detracts from the core argument and generates controversies that are well avoided.

D22 MARTYR INCARNATE

The real intention of the author comes out in a piece he wrote for *Sunday Observer* of London, in which he makes a genuine confession. He considers Prophet Mohammed to be a historical and spiritual figure. He was a prophet who he admits to be being a Messenger of God, with no pretensions to godly or angelic status.

Here is prophet who is contented to be a human being, subject to foibles and strengths of the race, in which the spiritual and the material are joined. Irony of the situation lies in the fact that according to Salman Rushdie "One may not discuss Muhammad as if he were human, with human virtues and weaknesses. One may not discuss the growth of Islam as a historical phenomenon, as an ideology born out of its time. These are the taboos against which 'The Satanic Verses' has transgressed . . . . It is for this breach of taboo that the novel

is being anthematised, fulminated and set alight".[24] Rushdie has begun to cast himself in the role of martyr. For nothing Salman contributed an article on 'Casualities of censor' in a book entitled *They Shoot Writers, don't they?*[25]

D3 THE CHARGE OF BLASPHEMY

The blasphemy with which Salman Rushdie has been charged lies at the heart of accusation against him. The controversy centres around the Satanic Verses cleverly placed in the mouth of the devil to undermine the very foundations of Islam. Islam is a cold logical religion which does not recognize any other intermediary between the God and the man. Mohammed the Messenger of God was the only intermediary recognized by Islam.

The Satanic Verses very cleverly tried to give acceptance to three popular goddesses of Mecca as the intercessionary. Such a recognition would have undermined the very basis of Islam. The Satanic Verses are no creation of poor Salman Rushdie.

He depended upon the canonical authority of contemporary Islamic Scholar at-Tabari, who may be quoted *in extenso* for placing the whole controversy in a proper perspective:

"Quraysh said to the Messenger of God (God bless and preserve him), Those who sit beside you are merely the slave of so-and-so and the client of so-and-so. If you made some mention of our goddesses, we would sit beside you; for the nobles of the Arabs (*sc.* the nomads) come to you, and when they see that those who sit beside you are the nobles of your tribe, they will have more liking for you. So Satan threw (something) into his formulation, and these verses were revealed, 'Have ye considered al-Lāt and al-'uzza, And Manat, the Third, the other? and Satan caused to come upon his tongue, 'These are swans exalted, whose intercession is to be hoped for, Such as they do not forget (or "are not forgotten")? Then, when he had routed them, the Proplet (God bless and preserve him) prostrated himself, and the Muslims and the

idolators prostrated themselves along with him. When he knew what Satan had caused to come upon his tongue, that weighed upon him; and God revealed, 'And we have not sent before thee any messenger or prophet but when he formed his desire Satan threw (something) into his formulation . . .,' to the words' . . . and God is knowing, wise".[26]

The *Annals* of at-Tabari who died in 922 AD are considered the most authoritative dealing with the life of Mohammed. If Salman Rushdie is to be charged with blasphemy for secondhand reference to the episode, early historians of Islam like at-Tabari may also have to be placed in the dock. That the Satanic Verses were believed to have been withdrawn at the instance of archangel Gabriel is also known in Islamic tradition. We have the authority of W. Montegomery Watt that 'The earliest versions do not specify how long afterwards this happened; the probability is that it was weeks or even months:[27]

D4 HERESY *vs* BLASPHEMY

The fundamentalist attack on Salman Rushdie has assumed ferocious proportions not because of his exposition of the satanic verses but on account of his secular pretensions. To the fundamentalists, heresy is any time worse than blasphemy, when especially the attack is generated from within.

Salman Rushdie makes no bones about his secular commitment. Such a stand should be most welcome in India because secularism is the very basis of Indian polity. All kudos to Salman Rushdie because he seems to uphold the laudable principle. He speaks as a person with deep roots in Muslim ethos and traditions. While Islam is a part of his heritage and legacy, secular ideas have been absorbed within himself as integral to his intellectual attainment. The acceptance of secularism has been attained through a thoughtful process.

D41 PHILOSOPHY OF SECULARISM

In his conflict in his mind about faith and rationality, the latter seems to achieve an upper hand over the other. While he is

not prepared to disown his Islamic cultural heritage (which has been of central importance to him all his life), he has been increasingly beginning to view the history of culture and civilization as "the eternal dispute between the secular and religious views of the world". Salman Rushdie thereby seems to place all religions of the world in the dock.

Scepticism about religious faith has been a part of world-wide movement for scientific attitude to life, secularism and rationality in the nineteenth and early twentieth centuries. Salman Rushdie seems to resurrect the old-time controversies, perhaps not entirely of his own volition and as if in an entirely defiant mood, he seems to cry out: "This is not the first time and this will not probably be the last".[28]

Furthermore doubt for him is the central condition of a human being. He is prepared to accept that there are more than one paths to truth. In this connection, he brings forward a basic critique of Islam. The same can be applied to any set of religious beliefs.

The following critique of Islam by Salman Rushdie amounting to severe indictment is not to be found in the book, but most probably can be subsumed in the pages of the book: "If your belief that what happened in Mecca in the seventh century was that a supernatural being, an archangel, an intermediary between an ordinary being and an even more supernatural being–that is the Supreme Creator–appeared and dictated certain words which were taken down and those words were the direct communication of God, then it is quite clear that anyone who takes any dissenting view is not going to be to your taste". There is an elemant of contradiction in various statements made by Salman Rushdie after the book generated controversies. Partly it is due to the heat of the moment and partly on account of a developing positioning by him in a process of gradual evolution.

D5 CORE ARGUMENT

This argument is clinched to its finality in the following dictat:

"It is very important that the Islamic world or any religious community should permit itself the right to discuss its own nature and origins without any subject being taboo".[29] Admittedly the book is an assault on Islam and its traditions with no holds barred.

The claims for eternal truth and unguestioned adherence by the faith are under attack in *The Satanic Verses.* The attack comes through questioning the eternal quality of faith, critique of religious leadership and by subjecting historical events in the religious world to severe tests.

Mockery, satire and derision have been employed to marshal the forces. Lampoon has also been effectively used by Salman Rushdie to down his antagonists. The use of foible has also been marshalled at length. Fiction and fact have been mixed so adroitly that it becomes impossible to disengage one from the other.

A large portion of the book has to do with migrants from the Indian subcontinent and their predicament in an alien and hostile environment of Great Britain. Such portions of the book are a mere frill. The only portions of the novel that come alive are about early Islam. The Jahilia Chapters are the real book.

The best thing in the circumstances is to scrutinize carefully the content of *The Satanic Verses.* Whatever has gone before is only the backdrop and an essential background.

The sections of the book to be subjected to scrutiny include the sections on the angel Gibreel (archangel Gabriel), Mahound (Mohammed), Ayesha and the Jahilia Chapters. A careful reading of these sections of the book establishes several truths, some which may prove unpalatable to Salman Rushdie himself.

He does not come out clean entirely. In fact, a certain diplomacy in reconstructing events would have saved him and the intellectual community of the world a great deal of bother. In the worlds of Voltaire, the principle that Salman Rushdie as a writer stands needs to be defended, not necessarily all that he has to say in the book.

Chapter 5

Islam the Central Thesis

E0 BACKGROUND

The Satanic Verses has pitted Salman Rushdie against the whole Islamic World. The world of Islam is not the central theme in terms of its total contents. Out of the total pages of 507 of the novel, only 72 pages (Section II: *Mahound* pp. 91-126 and Section VI: *Return to Jahilia* pp. 359-94) are concerned with the early days of Islam. Salman Rushdie claims to recapitulate those times in a dream sequence and by fictionalizing the real characters and events. The fictional garb happens to be a thin veneer. By taking liberties with historical characters like Salman, Khalid, Bilal, Hind, Abu Simbel, Ayesha and Prophet Mohammed, it does not help matters for Salman Rushdie.

There are two other sections (Section IV: *Ayesha,* pp. 216-40 and Section VIII: *The Parting of the Arabian Sea,* pp. 473-507) dealing with Islamic faith during contemporary times. The latter event is based as *The Hawkes Bay's Case.* In late February 1983, 38 Shia Muslims entered the Arabian sea at Hawkes Bay in Karachi in response to revelations received by a young girl by the name of Naseem Fatima, fictionalized by the name of Ayesha, the beloved wife of Prophet Mohammed, surfacing in at least four incarnations in the novel. This event is only a backdrop questioning the very basis of blind faith. The essence of the novel remains in the mere 72 pages about the origins of Islam.

E1 RUSHDIE'S CREDENTIALS

So much has been disputed about the novel for and against it. The protagonists are to be compared to foot soldiers fighting battles without a cause. A careful reading of the novel should be beneficial. It should be equally helpful to be able to read the mind of the novelist for understanding his intention. Salman Rushdie has spent several years thinking about the theme.

Religious faith is his central concern. He has attempted to do the unthinkable by casting doubt about the basic tenets of Islam. He thus placed himself in an invidious position by speculating about Islam and by casting doubts as a believer. Believing is the other name of the faith. He has thus dared to attack as an insider, an unpardonable sin in the mind of the faithful, whose number easily runs into several hundred of millions spread all over the continents.

Salman Rushdie seems to be well read in Islamic history and love. He is also knowledgeable about literature critical of early Islam. He is no less fascinated by the meteoric rise of a new faith arisen from the backwaters of Arabian peninsula. The historical characters described by him in the novel are flesh and blood characters determined to leave their mark on history.

Though irreverent at times, Salman Rushdie depicts Prophet Mohammed as a great historical character of godly proportions. Salman Rushdie knows his Islamic history well, because his doctoral degree from Oxford University was on the origins of early Islam. He has got into serious trouble because he is not only irreverent at times about several historical figures, but he seems to make fun of them by satirizing them. Nobody would know whether he intended all that to be deliberate.

E11 THE MODERN VOLTAIRE

Salman Rushdie having lived practically all his adult life in West has developed a degree of insensitivity to the responses

of societies governed by rules and regulations of unquestioning faith. Islam has been on defensive during recent centuries against the onslaughts of westernization. Moreover it is a total religion leaving no scope for chinks in the armour. Religion is a sensitive matter to be handled with much circumspection.

Faith leaves no scope for argument, especially in the face of attacks from unexpected quarters. Salman Rushdie has played the role of Brutus in the present context. He may not have expected the extent of responses to his fictional piece. The reactions should not have been unexpected by Salman Rushdie. There are reasons to believe that he must have a premonition of the events that followed the publication of the novel.

The novel starts with a quotation from *The History of the Devil* of Daniel Defoe, which aptly describes the present predicament of Salman Rushdie: "Satan, being thus confined to a vagabond, wandering, unsettled condition, without any certain abode, for though he has, in consequence of his angelic nature, a kind of empire in the liquid waste or air, yet this is certainly part of his punishment, that he is . . . without any fixed place, or space, allowed him to rest the sale of his foot upon". Satan is like a wandering star with no permanent abode for having dared to question the faith. Salman himself is in a similar predicament. He is hiding himself and moving stealthily from place to place for being the Voltaire of the twentieth century.

Satan + Salman = same predicament

E2 CREATOR'S ROLE

Salman Rushdie is in the class of literary figures like D.H. Lawrence. They seem to have a social philosophy of agnosticism. They try to swim against the current as a deliberate act. Salman Rushdie however lacks the literary fluency of greats like D.H. Lawrence, with the further disadvantage of confronting a larger antagonist in religious faith. While other literary figures have attempted to be severe critics of existing social mores and practices, Salman Rushdie has tried to play the God without possessing the necessary equipment for the role.

There are any number of references in the book to his preoccupation of questioning the validity of faith. He is however not an agnostic in the traditional sense of the term. He attempts to bring to bear the mind of modern-day sceptic to matters of faith, a sort of contemporary western attitudes in studying the matters of traditional faith.

Here is the man, who, in his own words "sets out to make himself up is taking on the creator's role", and no wonder, he is considered by the faithful as "unnatural, a blasphmer, an abomination of abomination" (p. 49). In the heart of his heart, Salman Rushdie must have felt greatly flattered at times for the attention paid to his novel.

The adulation and the adverse comments received by him are not entirely deserving. The novel makes an uneasy reading due to its heavy style and contents. No attempt has also been made by him to discuss the larger issue of faith in its philosophical content. It is the quality of sensationalism that has enabled the novel to be noticed.

E3 SCEPTICAL MIND

Scepticism is the most powerful instrument employed by Salman Rushdie in dealing with the faith of Islam. His thesis of doubt as the counterpoise to faith has been already quoted. He brings to bear the mind of a modern sceptic with complete western orientation to the study of a closed system. His is a western mind totally oblivious of eastern sensibilities. The matter becomes serious because he has a cavalier attitude to the handling of such a sensitive matter as religious faith. He seemed to believe in launching a frontal assault in order to make the point. The responses should not have been unexpected.

There are several instances that can be quoted from the book to establish the thesis. The whole section of the book is entitled MAHOUND. This was the term employed by European antagonists of Islam during medieval times. As Salman Rushdie has mentioned in the book, it was a term 'of scorn', 'the devils synonym' and 'The demon-tag the farangis hang around his

neck' (p 93).

The term may not have been used approvingly, but its use could have as well as be avoided. Salman Rushdie could have made the same points as strongly by avoiding the use of the offensive term. When viewed in the light of other critical references to the early Islam in the book, the truth of the matter is that Salman Rushdie has the proclivities to be less than respectable towards the established institutions. His novel on Pakistan, *Shame* indicates his tendencies in the same direction.

E31 REVELATIONS

Revelations are integral to understanding of all great religions. It is essentially true of Islam. The prophet has been termed as the messenger receiving messages from God through the intermediary of archangel Gabriel. The Holy Quran was entirely transmitted in similar manner. Believers could never think of being the least sceptical about revelations. Revelations are the very foundations of faith. That there may be scientific basis for revelations has been a major preoccupation of several renowned psychologists.

The number of sceptics questioning the very basis of revelations is no insignificant. The number of scoffers has also been a legion. Salman Rushdie is all the three at the same time. He is a believer impressed greatly by the majesticity of revelations which are entirely responsible for bringing into being a great religion of the world. He is a sceptic who has his doubts about revelations. He would like the entire range to be scrutinized for their authenticity.

Revelations being historical events now entombed in the past, their authenticity can be established in the proper context. The prophet was a great revolutionary of his times and way ahead of historical times he lived in. There are revelations which are time bound in the context of contemporary Arabia and there are revelations advocating the equality of man anticipating human progress by centuries.

There is enough of scoffing in the book, when in the words of Ayesha, the most beloved wife of the prophet, Salman Rushdie refers to his decision to increase the size of the harem. God provides the conveniant revelation to suit the personal convenience of the moment.

E4 TERRIFYING SINGULARITY

The prophet began his life as a businessman. He had thus developed the necessary skills for haggling, bargaining and profiteering to his advantage. Those skills in view of Salman Rushdie must have come handy to him in scoring over others whether those were angels and human beings, by "employing management skills la god" (p. 92). In the process the angels become a convenient instrument to suit the occasion and the situation by reinforcing the commandment. The fact however remains that men must have been tougher nuts to crack than angels due to their sceptical proclivities inherent in them. Salman Rushdie is also to be placed in the same class.

The terrifying singularity of the prophet is admired to no end. "A revolution of water carriers, immigrants and slaves" (p. 101), thus converts itself into an universal faith through the terrifying singularity of a single human being, who refuses either to be a God or be the 'son of God'. Salman Rushdie brings out the majesticity of the prophet in his meeting with Gibreel (The archangel Gabriel). While both of them are "scared out of their minds by the transcendence" of the occasion, it is Gibrel who "feels paralysed by the presence of the prophet" (p. 111).

His description of bodily responses on the advent of the revelation is most perceptive: "The dragging again the dragging and now the miracle starts in his my our guts, he is straining with all his might at something, forcing something, and Gibreel begins to feel that strength that force, here it is *my own jaw* working it, opening, shutting and the power, starting within Mahound, reaching up to *my vocal cords* and voice comes" (p. 112). Salman Rushdie is a novelist who can combine the

sublime and the ridiculous in the same breath.

E5 EXPERIENCING HISTORY

The line of demarcation between sublime and ridiculous is rather thin in the writings of Salman Rushdie. He feels at home at scoffing, ridiculing and maligning–He is at his best in such situations. No wonder Baal, the poet and contemporary of the prophet, is Salman Rushdie's hero. He finds himself in the role of prophet's adversary by employing the poetic barb. He makes use of his poetry as an effective vehicle of opposition to the new faith.

Poets in ancient Arabia played an important role as chroniclers, social critics and literary figures, performing the role of communicators *par excellence.* Salman Rushdie seems to speak for himself several centuries backwards to witness the early rise of Islam as its critic. Baal remains unreconcilable adversary of the prophet until his last days.

Before being beheaded, Baal pontificates: "Whores and writers, Mahound. We are the people you can't forgive. Prompt came the reply, 'Writers and whores. I see no difference here" (p. 392). The words that Salman Rushdie puts in the mouths of Baal and Mahound are deliberately spoken to underline the dilemma of writers in a society governed by religious fundamentalism.

This also indicates his own dilemma which he has tried to resolve for himself by living in the west. This has enabled him to express his views freely and put across the same to the international audience. It may not save him from the executioner's fate.

He seemed to live the experiences of Baal in his real life. It is given to few writers to live the fate of characters described by them. Salman Rushdie seems to recapitulate the experiences of his characters so soon after writing about them. Salman Rushdie seems to create history as he writes about it.

E51 THREE GODDESSES

He is no less sacriligious when viewed from the perspective of the faithful. No reference in the book has raised so much controversy as the case of three Meccan goddesses–UZZA (goddess of beauty and love), MANAT (goddess of fate) and al-LAT (mother-goddess), pitted against Allah. There is also an element of male versus female dominance in the controversy.

The three goddesses are the patron deities of Jahilia (Mecca). The people of Mecca were reconciled to embracing Islam, provided the prophet were to ask for Allah's approval of three goddesses. This offer of compromise sets the prophet to introspecting, "Sometimes I think I must make it easier for the people to believe" (p. 106). It sets him to a train of thought resulting in a revelation endorsing their acceptance. The revelation is subsequently reversed, being attributed to the devil taking the garb of archangel Gabriel.

There are several medeival authorities on record thus establishing the truth of the episode. The controversy has resulted in varying interpretations of the same. The faithful deny the historical veracity of the episode. It goes against the very fundamentals of Islam of recognizing no other God than Allah. The fundamentalists question the very basis of the premise.

There are others who recognize the acceptance of three goddesses as temporary aberration resulting from the machinations of evil forces. The departure from norm seems to confirm the validity of the basic proposition. There are others who seem to put the very basis of revelation in grave doubt. The fault of Salman Rushdie is compounded in the eyes of the fundamentalists, because the episode seems to support his sceptical mind in matters of faith. An unpardonable crime deserving of the severest punishment.

E52 SALMAN THE SCRIBE

Having unleashed himself in the three-Goddesses episode, Salman Rushdie lets himself go. While a certain objectivity is

maintained by him in the controversy, he is unrestrained in imagining the experiences of Salman the Persian scribe about recording the Holy Book. Those are bound to hurt the feeling of many more than the mere faithful. This thesis is however at the heart of the argument presented by the novelist.

The Persian admits to a lifetime of conjurer's tricks, 'The closer you are to a conjurer,' Salman bitterly replied, 'the easier to spot the trick' (p. 363). He complained bitterly about The plethora of 'rules, rules, rules' sending the faithful to utter despair. There were rules about every damn thing, "If a man farts let him turn his face to the wind, a rule about which hand to use for the purpose of cleaning one's behind. It was as if no aspect of human existence was to be left unregulated, free", (pp. 363-64). To Salman God appeared to be a business-man regulating all kinds of deals to the last detail.

Salman Rushdie speaking through Salman the scribe is relentless in scoffing at the faith. He tempts the scribe in resorting to interpolation in the text of the Holy Book. There is certain amount of hesitancy in the initial stages and a feeling of guilt for introducing the interpolations. One step leads to another and ultimately the text is distorted beyond recognition.

The text becomes a record of revelations of convenience for another reason. The revelations come tumbling down to suit the convenience of momentary situations, or gain advantage over others. There is thus a tailor-made text to suit the individual situations. Through the words put in the mouth of the Persian scribe, the faith is not merely viewed through the eyes of a sceptic, but it is mocked at, scoffed and belaboured with malice

E6 PROPHET'S GENEROSITY

Having mocked at revelations through the words of Salman, Salman Rushdie returns to his other self. He decides to put his best foot forward by underlining the generous nature of the prophet in moments of his greatest triumph of return to Mecca after his long exile to Medina. His adversaries are

reconciled to their physical decimation. Nothing of the kind happens. Salman is pardoned and "In all Jahilia (Mecca) not a door has been smashed down, not an old foe dragged out to have his gizzard slit like chickens in the dust" (p. 375). All those who accept the faith are welcomed with open arms.

This also includes Hind, the wife of Abu Simbel (The Meccan grandee) pitted against the prophet. It is interesting to note that Hind is a historical character who existed in real life. She not only represented authority but also female power. Islam in a manner of speaking was the triumph of male over female power seen in the act of surrender by long-defiant Hind and the overthrow of the three-goddesses from the Meccan scene.

Salman Rushdie is like a chameleon changing from one mood to another in quick succession. While he is mocking at one time in describing the three-goddesses episode or narrating the life story of Salman the Persian scribe or describing the drunken episode, he suddenly turns around 180 degree by singing the paens of the prophet.

Which of the Salman Rushdie is talking at a particular moment of time should stand up and be recognized? He has opened us a pandora's box. We are too near the event to appraise the consequences in future. He himself is certainly in no position to gauge the barometer.

E7 FREEDOM OF EXPRESSION

The Satanic Verses is essentially about the foundations of Islamic faith. It has opened up several issues. Unfortunately the novel has become an emotive issue. Millions seem to be sitting over judgement without hoping to read the actual text.

The book has also been caught up in East *vs.* West controversies. Many seem to view it as a diversionary attack on Islamic religious tradition by western Christiandom perpetuating the centuries-long conflict between the two conflicting civilizations. Rushdie is being viewed as a traitor who has gone over to the enemy camp.

Fundamentalists are opposed to the author and the book because those in their view question the faith and attack through underhand means the most sacred institutions of Islam. The chapter dealing with the Curtain (The Meccan red-light district) would look offensive to any decent human being. All this can be stated against the book and the author.

The controversy raises the larger question whether the rights of the literary author are inviolable to the extent that he is free to express his opinions without any outside intervention. That his conscience alone is the final judge is also a view strongly held, especially among intellectual circles of the world, thus upholding the assertion of Voltaire about his obligation to come to the defence of his worst enemy for upholding his opinions. *The Satanic Verses* thus raises more questions than answers them.

Chapter 6

Textual Truth

F0 PROFANE *vs* SACRED

In ultimate analysis, any writer worth his salt must be judged by the text. This truism applies with equal measure to Salman Rushdie. In the foregoing sections of the chapter, a rationale has been provided on the basis of his writings subsequent to the publication of the novel. In view of the raging controversy about the motivations of the novelist, the real issues have come to be befogged.

Being on the defensive, Salman Rushdie has tended to present an apologia for himself. It is logical for a person who views himself being in the dog house. The whole controversy is overlaid with arguments and counter arguments of polemical nature. To certain extent, Salman Rushdie seems to take pleasure in polemical argument. His letter to Prime Minister Rajiv Gandhi is an instance of the kind. One must go to the text to clinch the argument.

Unfortunately no rational discussion is possible about the book because it has been banned in India. Only those who had access to the copies circulating underground or available a few days before the ban can speak truthfully. There are some persons who were lucky to read the book while travelling abroad. Number of such people is very small.

It thus becomes necessary to quote extensively from the text to make the dialogue meaningful. The core of the book concerned with Islamic history comprehends less than a quarter of the book. To that extent, the burden of proof is somewhat

lightened.

The book has become part of the history, whether for its notoriety, or its courage in talking about the unthinkable, about taboos concerning religions in general and religious leaders in particular, because one treads on dangerous grounds where the line between the profane and the sacred is so thin. There are uncomplimentary references to the Thatcher England for which her ministerial colleagues have taken umbrage publicly.

Similarly there are several chapters about Changez Chamchawala, father of one of the two main characters in the novel, who has a striking resemblance to Salman Rushdie's father. He seems to have been patterned after his own father, as the younger Chamchawala is patterned after him. There is love-and-hate relationship between the two of them, which is also true of Salman Rushdie and his father in real life. These chapters are perhaps the best because the characters depicted therein seem to be so real in the contemporary context.

All these are however peripheral to the main theme. One should thus get on the task of wrestling with the combustible issue on the basis of the text. Let the defendent take his position in the dock. Let Salman Rushdie stand up and be counted.

F1 PREMONITION OF TROUBLE

Salman Rushdie must have a premonition of the trouble that lay ahead of him. There are repeated references to similar situations and consequences thereof. Earlier a reference has been made to Salman's desire to return to India and to his roots back home. In the hearts of their heart, the majority of expatriates look forward to such an eventuality. Such a hope is likely to be belied in the case of Salman Rushdie due to reasons beyond his control.

To Changez Chamchawala, a man without roots is a man untrue to himself and he "becomes a two-legged lie, and such beasts are Shaitan's best work" and further more addressing

Chamchawala the son directly, his father assures him that "The devil has only your body. When you are free of him, return and claim your immortal spirit. It flourishes in the garden".[30] The nostalgia on the part of the old man has considerable elements of concern and affection.

His antagonists represented by Syed Shahabuddin are unlikely to yield any quarters to him. With disdain and flourish that are the stock-in-trade of Syed Shahabuddin, he does not hesitate to condemn Rushdie by addressing him directly: "Rushdie, the Islamic scholar, the man who studied Islam at the university" has to brag about his Islamic credentials, so that he can convincingly vend his Islamic wares in the West, which has not yet laid the ghost of the crusades to rest, but given it a new cultural wrapping which explains why writers like you are so wanted and pampered".[31]

Syed Shahabuddin may be correct about the racial overtones in the west, whereby Eastern religions except Christianity are treated with a certain disdain and contempt. To call Salman Rushdie as the lackey and instrument of European imperialism and a man who has sold himself willingly may be out of the mark.

Salman Rushdie may be mistaken in his interpretations of the Islamic text. He may be excused of exaggerating certain historical events to suit his fictional imagination. He may be charged with playing to the gallery. He may be pilloried for his negative attitudes and of scepticism without quality of mercy that is the characterism of humanism at his best. All this may be true.

It is also conceivable to lay several other charges at his door. To accuse him of diabolic intentions is a charge that may not be sustainable in any court of law. There is considerable degree of freedom in writing a literary text. Who knows Salman Rushdie may be exercising that autonomy for the individual? Perhaps foolishly!

F2 DAMOCLE'S SWORD

Solomon's sword seems to hang over the head of the novelist.

He must have almost anticipated the future. Curse seems to be the recurrent theme like repetition of the main theme in a musical piece. The delineation of the curse by Salman Rushdie in his novel is an exact replica of his present-day predicament. What a character speaks out in the novel seems to be tailor-made for Salman Rushdie himself. The situation is comparable to the Greek tragedy in which the characters are aware of their inexhorable fate and yet they are reconciled to their tragic end.

Tragedy must have been writ large on the face of Salman Rushdie soon after completing his novel. Obviously great deal of thought has gone into the writing of the novel in which well-established dogmas are questioned and the faith of men is put into grave doubt. It took five years for him to write the novel. The tyranny unleashed by Imam Khomeini may not have been anticipated by Salman Rushdie, but it would be naive of anyone in not considering the possibility of cyclonic storm hitting the Islamic world at its rawest point.

He should have known the consequences for taking the role of the creator. In the words of *The Satanic Verses:* "A man who sets out to make himself up is taking on the creator's role, according to one way of seeing things; he's unnatural, a blasphemer, an abomination of abmonations. From another, you could see pathos in him, heroism in his struggle, in his willingness to risk: not all mutants." So Salman Rushdie considers himself as a mutant, who may or may not survive, because he is presently involved in the struggle for survival in a totally hostile environment.

He has been called a blasphemer. There have been demands in Great Britain for the traditional law of blasphemy (strictly applicable to Christianity) to be amended so as to cover other religions including Islam. He has been termed a *Shaitan* from numerous puplits and by the popular Muslim press. In his *fatwa* of February 14, 1989, Imam Khomeini has passed a death sentence against Salman Rushdie. He has been called worst terms than being a blasphemer and abomination of abominations.

All that because an artiste has dared to play God. Salman Rushdie is like a person who is asked to write his fate. He decides to enact a Greek tragedy while in full command of his faculties. Lo, behold, all that he tried to anticipate comes to pass to the last detail. After all, it is given to few astrologers to predict their own fate and see it all happen before their very eyes.

F3 THE PERSECUTED BEING

The fundamentalists have taken umbrage at his dealing with the Satanic Verses at length in his novel. Since then he has been a persecuted being. He has explained several times in his statements that in this respect the medieval Muslim historian at-Tabari is the authority he has employed in his extenuation. Elsewhere we have quoted the text of al-Tabari writing on the subject. There are many Muslim theologians who are convinced about the lack of genuineness of the Satanic Verses. The fact remains that a respected historical authority is a source.

There are other historical sources in support of the same. In the version of Salman Rushdie, Mahound (the epithet for Muhammud employed in the book)[32] speculates whether he should not make it easier for the Meccans to accept Islam and so 'He asks for Allah's approval of Lat, Lizza and Manat. In return, he gives his guarantee that we will be tolerated, even officially recognized; as a mark of which I am elected to the council of Jahilia".[33]

Recognition of the three goddesses obtains approval of the Meccans (Jahilians in the version of the novel) as intercession-aries between the people and the God, but the acceptance of the Satanic Verses would have resulted in contradicting the very basic tenets of Islam. Compromise would have been at the very cost of principles, which were definitely revoluntionary for those times. It would have been like Karl Marx accepting capitalism rather than the creed of communism as the ultimate panacea for mankind. This would have been certainly in contradiction to all that Karl Marx stood for throughout his life.

Prophets are also human beings who commit mistakes, but they are unlikely to commit Himalayan blunders by contradicting their basic creeds. As in the version of at-Tabari, *The Satanic Verses* contradicts the earlier version in the following words: "It was the Devil", he (Mahound) says aloud to the empty air, making it true by giving it voice. 'The last time, in was Shaitan'. This is what he has *heard* in his *listening*, that he has been tricked, that the Devil came to him in the guise of the archangel, so that the verses he memorized, the ones he recited in the poetry texts, were not the real thing, but its diabolic opposite, not godly, but satanic".[34]

What has got Salman Rushdie his treatment is the charge of treating the sacred rather irreverently. There are any number of examples of the same in the novel. As regards the Satanic Verses are concerned, he has attempted to interpret the text of al-Tabari. He cannot thus be faulted on that account. The incident has certainly come handy to him in establishing his *bonafides* as a doubting Thomas. All the same he has touched upon the raw nerve of the fundamentalists which must be indeed his real intention. Ironically the battle has been joined upon what apparently appears to be a non-issue.

F4 OFFENCIVE PASSAGES IN FACT

The Satanic Verses seems to have ignited the passions of Islamic fuudamentalists. As a proclaimed secularist, Salman Rushdie has perfect freedom to choose sceptism as an alternative to faith as his fundamental creed. There are several other passages which are likely to ignite already inflammable passions. It has not come to pass because the book is not readily accessible to readers in India, Pakistan and practically all the Muslim countries.

Whether there is scope for considerable doubt on Salman Rushdie's stance on the Satanic Verses (he has the authority of al-Tabari to his rescue), the same cannot be said about several other chapters and sections of the book. Scepticism

tempered with an infinite quality of mercy is a human virtue.

There are several instances in the life of Prophet Mohammed extending pardon to his erstwhile enemies. The quality of mercy is thus not only a Christian virtue. Salman Rushdie should have been graceful in his novel by applying the same quality while depicting the main characters in his novel. He tends not only to show irreverence at times, he has gone further by lampooning and ridiculing certain personalities with an honoured place in the religious hierarchy of Islam.

It is immaterial whether the names have been changed or historical events and episodes of religious import twisted and turned around, the impact is sourish and bitter. It leaves a bad taste, even in the mouth of those who may be as secularist as Salman Rushdie himself in their outlook on life.

Antagonism in intellectual debate is not to be considered as a licence. Salman Rushdie could have avoided this bitterness by taking the straight path of employing literacy medium for arguing about basic issues of human existence. The dialectical relationship between faith and scepticism or doubt is major issue of intellectual concern in the twentieth century.

F5 MYSTIC EXPERIENCES

It is now beginning to be realised that the line of demarcation between faith and intellectual scepticism is rather thin. Psychoanalysis and mysticism have established that there is a grey area which falls between the two positions. Positivism is no more assured of its unassailable status.

Salman Rushdie could, for instance, have examined in depth Prophet Muhammad's visions and extra-sensory perceptions on the basis of extensive literature available about mystic experiences; those are of legitimate interest to psychologists as subjects of scientific investigation. The distinguished authority on Islam, W. Montogomery Watt, has, for instance, placed the matter in a proper perspective: "To assert that Muhammad's visions and locutions are hallucinations, as has sometimes been done, is to make theological judgements without being

fully aware of what one is doing, and thereby to show a woeful ignorance of the science and sanity of writers like Paulain and the discipline of mystical theology which they represent. Whether visions and locutions are imaginative, or intellectual, is no criterion of their truth or validity".[35]

These words of wisdom were written as late as 1953. The science of psychology has gone much beyond the confines of the fifties in the last four decades. There is no perception of the same in *The Satanic Verses.*

Much less, there was any scope for ridicule. Matters concerning religious experience need to be taken rather seriously. Salman Rushdie has failed to do so. Here there can be no hesitation in endorsing the criticism of the likes of Syed Shahabuddin on this score. Seriously speaking, the criticism in this connection is on grounds of home rules that need to be strictly observed by literati in interpreting historical events. Salman Rushdie has erred in certain portions of the book which we propose to illustrate by quoting from the book in the following paragraphs. The citations shall help to establish the validity of foregoing criticism based on generalized principles.

F6 CHARACTERS FROM REAL LIFE

There is the character Salman.* He has been described as the scribe recording the holy verses. When asked about the authenticity of visions of the prophet, he turns up with his reply which leaves no doubt about the duplicity by asserting: "The closer you are to a conjurer, the easier to spot the trick".[36] It is

* Salman is a character based on a real life character 'Abdullah ibn Sa'd, a Secretary to the Prophet, who was taking down the sayings of the Koran at his dictation, and at one point, when the Prophet broke off, the secretary continued aloud at to the end of the sense as he thought it should read, and Muhammad absentmindedly incorporated 'Abdullah's suggestion as the divine text. A prey to doubt of the Prophet's inspiration, 'Abdullah abjured Islam and fled to Mecca. When the city fell the prophet wanted to kill him, but he finally escaped with life after his foster-brother "Uthman interceded for him".

(Rodinson, Maxime. Mohammad, tr. from the French by Anne Carter, Pengiun Book, 1973, p. 219)

said with apparent bitterness that leaves no scope for any doubt. There is a detailed pen portrait of a Meccan woman with snide references to her life style. She is shown to be a great antagonist of the prophet. Her portraiture is almost derogatory. She is a historical figure with distinguished lineage in Islamic religious history.

There is the imaginary character of Baal, the poet who is, again, antagonist of the prophet and when being led to the gallows, he shouts over his shoulder, ""Whores and writers, Mahound. We are the people you cannot forgive? Mahound replied, 'Writers and whores. I see no difference here"".[37]

The most objectionable are several sections of Part VI *Return To Jahilia* describing the scenes in the red light area of Jahilia. Certain honoured personalities have been placed in the red light district through a process of analogical references. As Syed Shahabuddin has delicately put it, Part VI section of the novel is vulgar beyond description, because Salman Rushdie "Had the nerve to situate the wives of the Prophet, whom we Muslims regard as the mothers of the community, in a brothel and you expect the Muslims to praise your power of imagination".[38] All the eleven of them have been mentioned by name in a single paragraph. There can be no strong words to condemn the act of sacrilege committed by Salman Rushdie.

F7 CRITICISM

It is not surprising for him to have committed the serious *faux pas.* In his earlier novels also, *Midnight's Children* and *Shame*, and, more so in the latter book he has been no respector of individuals. Since those are contemporary political figures, thinly disguised by fictional names, the lampooning could be defended and justified.

A dialectical process by which the quantity changes into quality has taken place in his latest novel *The Satanic Verses.* A distinction thus needs to be drawn between a literary writer's right to have a say without harassment and fear, and his right to transgress limits about which there seems to be

general consensus.

Salman Rushdie has raised legitimate questions about the meaning of human existence in his novel. All kudos to him for raising a debate. He has the right to have his say as a secularist in the sense of correct English usage. (It is not intended by him in the manner secularism is talked about in India). All this has been defended by the community of thinking people all over the world. This mandate does not give him a licentiousness with no holds barred.

It is our submission that certain portions of Part VI cannot and should not be defended. All those who come to his defence must be able to point out the exemptions. The freedom of expression, even when stretched to the farthest, does not grant Salman Rushdie a total mandate.

The debate on the book need to be balanced one, with plus and negative marks to be equally distributed. This criticism however does not detract from the reality that the fundamentalists have sought to transgress the limits delineated for the civic society.

The whole structure of fundamental rights built so laboriously over centuries cannot be wished away by the *fatwa* of the Imam. We shall be required to return to the medieval ages with its absence of the rule of law. The well recognized principles of the civic society provide the right to charge as well as to defend to the antagonists within a well defined framework. No one has the least authority to take away the same right from Salman Rushdie.

It is incumbent upon him to provide public explanation for the objectionable portions of the book. He is normally so voluble. He seems to be coy in this manner. He should write a full defence of the book explaining the negative and the positive

Honest introspection is the best policy for all human beings struck by their conscience. If Salman Rushdie were to do so, he would still come out the best. What he needs to do is to write true confession in the Gandhian sense of the term as the compendium of *The Satanic Verses.* Who knows, he may be

engaged in the exercise presently in the quietitude of his solitudinous existence?

F8 THE GRANDEUR OF SCENARIO

Salman Rushdie seems to have been swept off his feet due to sheer grandeur of the scenario. There was the great idea of new religion that came into the world and swept off everything before it through the sheer personality of the prophet; he was equally at home as statesman and a military strategist. Here was the sweep of the history.

Salman Rushdie seems to have perceived the situation correctly in the initial sections of the book. He poses the issue before the prophet of a new faith correctly in the following words: "When a great idea comes into the world, a great cause, certain critical questions are asked of it'. . . and 'History asks us: What manner of cause are we? Are we uncompromising, absolute, strong, or will we show ourselves to be timeservers, who compromise and yield".[39]

Nothing could be put in better terms in describing the dilemma of a faith opening up a new chapter of mankind's history. Such a man must have been a romantic at heart for he dreamed dreams which became reality in his life time.

Here was a prophet about whom a great deal authentic material is available. The struggles in his mind, and, for instance, execution of thoughts into reality could have been depicted on a grand scale.

It is recorded in history that he mulled over great issues by weighing the pros and cons before taking a decisive step. He was very human especially in relations with his wives. He tried his best to be equitable in treating them, but undoubtedly he had his favourites like all normal human beings.

Salman Rushdie has turned his blind eye to all this. If his criticism raising doubts were tempered with the positive side of early Islam and its leaders, particularly Prophet Mohammed, he would have written a great novel, without in any manner compromising his secular credentials.

F9 REAL ISSUE FORGOTTEN

In this tug of war between the Islamic fundamentalists on the one hand and Salman Rushdie along with his cohorts, the merits and demerits are in danger of being lost. The cacophony has nearly drowned the real issues in its noise. The issues are the rights of literary expression, limits of legitimate criticism, rights to examination of religious faith critically, rights of citizens in a civic society and responsibilities of literati owed to the community. It also involves defining of limits of translating historical events and personalities into a literary text.

There is a host of questions that can be raised. A little adroitness on the part of Salman Rushdie would have done the trick. After all adroitness does not amount to compromising on principles.

All this is past history that cannot be decimated from the mind and recorded history. What is necessary is to contain the debate and confine the skirmishes at verbal level. These have also to be prevented from turning into a larger conflagration. This is all negative criticism. The severest criticism that can be laid at the door of Salman Rushdie is that he lacked the capability to say whatever he wished to say in criticism with a positivie frame of mind.

The best thing that can be done is to quote, Montgomery Watt, the sage-scholar in assessing Mohammed. His credentials are the highest for his impeccable erudition. He has to say the following: "Morever, none of the great figures of history is so poorly appreciated in the West as Muhammad. Western writers have mostly been prone to believe the worst of Muhammad, and whenever an objectionable interpretation of an act seemed plausible, have tended to accept it as fact. Thus not merely must we credit Muhammad with essential honesty and integrity of purpose, if we understand him at all; if we are to correct the errors we have inherited from the past, we must in particular case hold firmly to the belief in his sincerity until the opposite is conclusively proved; and we must not forget that conclusive proof is a much stricter requirement than a show of plausibility,

and in a matter such as only to be attained with difficulty".[40]

Beleaguered as he is and certainly showing nerves in a state of siege, besides enacting Casabianca in the circumstances, he could have written a great novel by keeping the advice of Montgomery Watt in his mind. Instead of getting bogged down in the polemics, Salman Rushdie ought to rise above his present circumstances with a positive state of mind and perhaps write a critique of the book himself.

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19. Rushdie, Salman. Clerics have become Islam's thought police. *Times of India* (New Delhi), January 27, 1989, 3 (pt. II); orginally published in *Sunday Observer* (London).
20. Sorabjee. *op cit.*
21. _____. "Shame". *Illustrated Weekly of India*, March 12-18, 1989, 12. (Extracts from question-answer interview with Salman Rushdie).
22. Puri. *op. cit.*
23. *Op. Cit.*
24. Rushdie. *op. cit.*
25. Faber and Faber, London, 1984.
26. Montgomery Watt, W. *Muhammad at Mecca.* Clarendon Press, Oxford, 1953, p. 102.
27. *Ibid*, p. 103.
28. "Shame", *op. cit.*
29. *Ibid*, 17.
30. Rushdie, Salman. *The Satanic Verses*. Viking, London, 1988, p. 48.
31. Shahabuddin, Syed, *op. cit.*
32. Rushdie, *op. cit*, p. 49.
33. *Ibid*, p. 105.
34. *Ibid*, p. 103.
35. Watt, Montgomery. *op. cit*, p. 57.
36. Rushdie, *op. cit.*, p. 363.
37. *Ibid*, p. 392.
38. Shahabuddin, Syed *op. cit.*
39. Rushdie. *op. cit*, p. 81.
40. Watt, Montgomery. *op. cit.*, p. 52.

Section II

Obscenity in Law and Literature: The Case of Lady Chatterley

Chapter 7

Ulysses: Cause Célèbre

A0 CAUSE CÉLÈBRE

H.D. Lawrence's *Lady Chatterley's Lover* (1928) has become the *Cause Célèbre* in the history of censorship of literary works. Henry Miller's *Tropic of Cancer* and John Cleland's *Memoirs of a Woman of Pleasure* (popularly known as *Fanny Hill*) are equally famous or notorious for similar reasons. The legal battles over these pieces of fiction occurred much later. The classic battle was over James Joyce's *Ulysses* in the United States District Court in 1933. The case came to be known as "United States of America, *libellant.* One Book called "Ulysses" Random House, Inc., *Claimant.*[1] The judgement delivered by the United States District Judge, John M. Woolsey is a classic one, to be noted not only for its legal acumen, social prescience, but also its literary quality. The judgement was a precursor of the subsequent judgements to follow. It is to the credit of Judge Woolsey that in spite of his legal conservatism, he places the ball properly on the literary ground. Law is a veneer that provides a mere covering to the literary merits of the novel.

The pirated edition of *Ulysses* was brought out by the maverick publisher Samuel Roth, for which he was sentenced for thirty years. The real battle was fought around the edition of the book brought out publicly by the respected publisher Random House. The legal and literary battle was fought around the novel inside and outside the court room. Judge Woolsey was obviously far ahead of his contemporaries and

the rest to follow him. It is perhaps an impeccable judgement combining legal, social and literary judiciousness in equal measure. Judge Woolsey has called *Ullysses* "an amazing *tour de force.*" The expression applies in equal measure to the judgement. It goes to prove that literary criticism is implicit in the best of the legal judgements and thus restores to the literati the proper province of judging literary works according to literary criteria.

A1 "DIRT FOR DIRT'S SAKE"

Judge Woolsey concedes that *Ulysses* was not an easy book to read or to understand due to the heaviness of the theme, its language and obscure references. The book can be viewed as disgusting in several situations in the opinion of the learned judge, for using four-letter words. Those can, however, not be described as "dirt for dirt's sake". After all, "those are old Saxon words" employed by "almost all men" and "many women naturally and habitually". Judge Woolsey implies thereby what is normal occurrence in day-to-day conversation can be by no means abnormal in literature. The finest tribute is paid to the novelist described as artist "each word as the book contributes like a bit of mosaic to detail as the picture which Joyce is seeking to construct for his readers".[2]

Ulysses is a remarkable novel in several respects including its unreadability, describing one day in the life of persons belonging to the lower middle class living in Dublin in 1904. It describes the day in the life of these persons as they went about their preoccupations. What went on in their minds is the essence of the book. It is a psychological study of working of minds in the innermost depths. The other great novelist with whom James Joyce can be compared is Fodor Dostoyesky.

In the words of the judgement, "Joyce has attempted–it seems to me, with astonishing success–to show how the screen of consciousness with its ever-shifting kaleidoscopic impressions carries, as it were on, plastic palimprest, not only what is in the focus of each man's observation of the actual things about

him, but also in a penumbral zone residua of past sessions, some recent and some drawn up by association from the demain of the subconscious. He shows how each of these affects the life and behaviour of the character which he is describing".[3]

Lady Chatterley's Lover of D.H. Lawrence by comparison is a mere piffle. It is the sheer novelty of latter that overwhelms. *Ulysses* however makes a lasting impression. It tackles the universal theme about the working of the subconscious. Sexuality as in the Freudian context plays a dominating role in the lives of ordinary human beings. James Joyce was thus ahead of his contempararies. It was the sheer force of his personality as expressed through his literary *metier* that leaves the lasting impression, besides his overwhelming social presence.

A11 FOUR-LETTER WORDS

The issue to be decided by Judge Woolsey was whether the book was obscene, so that it was, to be subjected to "seizure, forfeiture and confiscation and destruction" according to the prevalent obscenity laws of the United States. Besides legal issues, it raised a storm of protest among literary circles of the United States. The battle was watched with keen interest and anxiety in other parts of the world. Judge Woolsey became an arbitrator through sheer necessity.

He very wisely consulted at least two literary critics about the novel. Their august judgement seemed to confirm Judge Woolsey's legal sagacity in the matter. In his own words, "I was interested to find that they both agreed with my opinion: that reading "Ulysses" in its entirety, as a book must be read on such a test as this, did not excite sensual impulses or lustful thoughts but that its net effect on them was only that of a somewhat tragic and very powerful commentary on the inner lives of men and women".[4]

Having fortified himself with literary opinion, Judge Woolsey went about enacting the role of the demolition squad, by employing law as an effective instrument against centuries-old

norms of defining obscenity, fortified as those were by convention and religious morality. Judge Woolsey was required to determine whether *Ulysses* was an offensive piece of writing.

The test laid by judge before himself was "whether the intent with which it was writing was what is called, according to the usual phrase, pornographic, that is, written for the purpose of exploiting obscenity". While crediting the novel with its "unusual frankness", the judge, with the touch of an artist in him, did not" detect anywhere the leer of the sensualist" in the novel. That settled the issue in favour of the James Joyce's novel. It was not found to be pornographic.

While exploring the intent of the novelist, he was credited with "sincerity and honesty", for employing four-letter words as being essential to the situations he sought to depict in the novel. The use of such words was appropriate in the circumstances for highlighting the drama of the novel, wherein some characters in the novel were caught up.

The employance of four-letters words was thus essential to realistic description of social situations in which the characters of the novel were caught up. James Joyce had done what his predecessors in the literary world had evaded tackling in their pieces of writing. He dared to tread the unfamiliar ground of the subconscious, sexuality and social realities, as none had attempted to do so earlier.

A2 REAL INTENTIONS

Obviously Judge Woolsey drew its inspiration from The New York State of Appeals in the *Halsey* case (1922), wherein it was stated that "A book could be ruled obscene because of selected words or paragraphs. The entire work must be considered as a whole". Accordingly close attention was given by him to the real intention of the novelist, "Whether the intent with which it was written what is called, according to the usual phrase, pornographic–that is, written for the purpose of exploiting obscenity".[5]

One must read the intention of the novelist to find out the

real motivation. Dirty words, in other words, take a different meaning in the different context. The other test, besides that of appraising the entire work, is of the impact on the normal person of the novel.

There is moral judgement involved in appraising the work as a whole (not in bits and parts). Who is a typical normal person? He be as elusive as the scarlet pimpernel. There is a whole literature about the average person, the normal human being and special categeries of human beings, for whom the literature is intended. This has been the heart of the matter in deciding about censorship.

The case of *Ulysses* decided as early as 1933 has virtually opened the pandora's box and the carpet has been kept rolling since then. The novel concerned and the legal case fought over it are thus landmark intances. The honour of leading the fight has gone to the right novel ("for psychological insights into the human psyche"), the rightful novelists("for enacting the prophet through his literary works") and the great judge ("for his sanctifiction of future through the present"). Censorship has come to find the formidable opponents in all three of them.

The lines of damarcation between sexuality, sensuality, obscenity and pornography have come to be obliterated. Not only the advocates of censorship have come to be censored, the purveyors of "dirt for dirt's sake" have also come to find a fitting anwser. The dirty feeling is of the mind.

The problem of censorship has also to be viewed in the historical context. Justice Frankfurter was farseeing when he stated in a censorship case in 1959. Can it be doubted that there is a great difference in what is to be deemed obscene in 1959 compared with what was deemed in 1859?". What was considered censurious in 1933, when the *Ulysses* judgement was delivered, was no longer so in 1989. Judge Woolsey and the author James Joyce certainly stand vindicated.

A3 SOCIETAL FUNCTIONS OF LITERATURE

Literature at its best has been truly reflective of the malaise of the society. Fiction has increasingly begun to play a larger

than life role in the process. It has in modern times become a mirror in which social tensions have come to be truly reflected. The best of the fiction (like other forms of literature, especially poetry) may eschew moral judgements. It certainly performs the role of the censor without any legal sanction.

Novelist at his best also performs the role of the oracle. James Joyce's *Ulysses* certainly partakes of the privilege. He is an oracle in not only forecasting the future, but also in defying conventions. The society is hit below the belt at obviously at its most vulnerable spot. James Joyce seems to perform the role with a degree of aplomb and deliberateness, which, when viewed in retrospect, seems to be no less than astonishing and extraordinary. The man has guts. He has to be saluted for the same.

Now that nearly six decades have been over (since the battle was fought and won inside and outside the courts), James Joyce and Judge Woolsey come out with laurels. What must have seemed so distracting to so many yesterday, seems so ordinary and matter-of-fact today.

The classic quality of the novel has never diminished. The court judgement is also a classic, apart from being landmark judgement that looked into the future accurately. Both of them have passed into history. The history of censorship of new and unorthodox ideas is hardly replete with such examples.

Ironically enough, the history of censhorship of intellectual ideas owes itself to intellectual leaders of the community throughout the history. Plato was undoubtedly the progenitor of intellectual ideas in organized form. Poets were as important as philosophers in ancient times. Plato accordingly suggested censorship of poetry, so that "The poet shall compose nothing contrary to the ideas of the lawful, or just, or beautiful, or good, which are allowed in the state, nor shall be permitted to show his compositions to any private individual, until he has shown them to the appointed censors and the guardians of the law, and they are satisfied with them".[6] Plato would have suggested a similar line of action for *Ulysses, Lady Chatterley's Lover* and *The Satanic Verses.*

Chapter 8

Legal Battles over Obscenity

B0 OPENNESS IN SEXUAL MATTERS

Censorship of books has been the prerogative of the Roman Catholic Church for centuries together. The first list of books prohibited by the Church was set forth by Pope Paul IV in 1559. The *Index of Forbidden Books* was in force for well over four centuries, untill in early May 1966 Alfred Cardinal Ottaviani told Vatican City's weekly newspapers, *L' Osservatore della Domenica*, that the index was no longer an applicable and enforceable instrument of censorship (it was henceforward to be viewed solely as a historic document). In fact the last editions of the *Index* was published in 1948. It was six years before the case for censorship of *Lady Chatterley's Lover* was decided favourably by British courts. The Vatican very wisely was able to anticipate developments. The discontinuation of censorship by the Church has however ended the controversies.

The debate about on obscenity and pornography has intensified in recent years, as the controversies about censorship of political literature have somewhat subsided. Religious literature still continues to be a sensitive subject. Pornography and obscenity have become matters of public concern in recent years due to flood of literature about sexual matters. It is peculiarly a post-Second World War phenomenon. There has also been an openness about such matters.

Sex is no longer a subject confined to medical literature. There has been concern and awareness shown in literary circles about the appropriateness of themes concerning sex. A

major determining factor has been decisions of the courts of laws in this connection. The judicious decisions have been greatly instrumental in introducing openness in these matters. Law has proved to be a progressive force. This fact needs to be brought out historically.

No discussion on matters pertaining to pornography and obscenity is complete without reference to 'the Hicklin Rule' (1868). It has ruled the roost for well over a century. The Humpty Dumpty was displaced of its pedestal, partially by the decision of the United States District Court in *Ulysses* case in 1933, and, very substantially, by *Regina* v. *Martin Secker and Warburg* case concerning *Lady Chatterley's Lover* decided by the British Courts in 1954.

B1 COCKBURN, C.J.

Lord Chief Justice Cockburn laid down the traditional test for obscenity in 1868. It came to be known as *Hicklin Rule* and seems to have been quoted in almost all the obscenity cases for nearly hundred years. The controversy arose from the publication of a pamphlet combining combustile elements of criticism of religious matters with obscenity. Religion and obscenity have proved to be the most lethal combination until contemporary times. The instance of Salman Rushdie's *The Satanic Verses* in our times proves the point. The controversy in 1868 cencerned a pamphlet *The Confessional Unmasked.* It consisted of extracts taken from the writings of certain theologians. They had written at various times on the doctrines and disciplines of Church of Rome, and in particular on the practice of auricular confession.

Confession is very much integral to Roman Catholic faith. It was sought to be shown in bad light by employing filthy words through description of obscene acts by quoting from the works of theologians belonging to the faith. The text was based on actual extracts, which were cleverly juxtaposed and thus sought to be shown in bad light. The defendents sought to make the plea that the real attention of the pamphlet was

to do good through constructive criticism of religious practices.

In the opinion of the court, one half of the pamphlet consisted of "causistical and controversial questions", which are by no means obscene, the other half was said to be impure, because it consisted of "impure and filthy acts, words, and ideas".

While the contents of the pamphlet may seem unexceptional on the surface, the verdict turned on the intention of the author of the pamphlet. Cockburn, C.J., stated in his judgement that, it was a well-accepted principle of law that "to constitute an offence, there must be a guilty mind", but, the same in itself, is not enough for "the commission of offence".[7]

B11 HICKLIN RULE (1869)

Cockburn, C.J. admitted that the mere use of obscene words, or the occurrence of obscene passages, does not make the word obscene. The context in which the words are employed assumes great singificance. Rhetorics are used full blast to ask as to "What can be more obscene" than "the works of the standard authors in English poetry, from Chaucer to Byron?" The same test could be employed to several major works of William Shakespeare. Similarly it is true of several portions of great classics like Mahabharata and classical writings of Kalidasa and Jayadeve. The Chief Justice seemed to have clinched the argument by marshalling the support of Milton, who forcefully justified in his self-defence "the use of language adequate to the occasion, though it may be obscene".[9]

There is certain amount of illogicality to be discovered in the foregoing argument. The licence for using so-called obscene words seems to have been conceded to established literary authors. There are however few instances of budding authors having been defended for presenting unorthodox ideas, words and situations. James Joyce and D.H. Lawrence, for instance, were saved from the hangman's noose on account of their well-established literary reputation.

It is thus crystal clear that even the most progressive and

far-sighted members of the honourable judiciary follow the lead, rather than show the way. This statement should not however detract from the historical significance of landmark judgements in matters concerning obscenity and pornography. The due must be conceded whenever it is due.

Lord Chief Justice Cockburn in his famous 'Hicklin Rule' made the following pronouncement which like a Vedic chant has reverberated in the courts of law all over the world. The subsequent judgements for the next hundred years have echoed his historic pronouncement and have been a mere elaboration of the theme. The subsequent judgements have been variations on the same theme, elaborating, refining and extending the main theme.

The pamphlet in question was considered obscene on account of three reasons: 1) For showing, the depravity of the Roman Catholic priesthood, 2) The iniquity of the confessional, and 3) The questions put to the females in confession. The intention quite obvious was to show the Roman Catholic Church in bad light. Not only that, it tended to deprave the mind of the innocent without their being aware of it.

The famous words used in the judgement were as follows: "I think the test of obscenity is thus, whether the tendency of the matter charged as obscenity is to deprive and corrupt those whose minds are open to such moral influences, and into hands which are open to such immoral influences, and into hands a publication this sort may fall".[10] The target audience appears to be the average reader. He is supposed to be innocent of subtleties.

It is the innocent abroad; who is intended to be enmeshed. The law comes to the rescue of 'damsels' in distress through censorship. The work in question seems "to do mischief to the minds of those to whom such questions are addressed, by suggesting thoughts and desires which otherwise would not have occurred to their minds".[11] This is the main refrain of the judgement.

This landmark judgement has been affirmed many times over and indeed the Indian courts have set so much store by

the *Hicklin Rule.* There have been many elaborations since then and now there is an increasing tendency to marginalize it in contemporary times, but like the Banquo's ghost the *Hicklin Rule* seems to leave it mark all the time.

B2 HALSEY CASE (1922)

Another fifty-four years were to pass before the New York Court of Appeals in another landmark judgement in 1922 pronounced what has come to be known as the *Halsey* case: "A book could not be ruled obscene because of selected words or paragraphs. *The Hicklin Rule* does not concern itself with the work as a whole".[12] It views the words in isolation. So long words have a deleterious effect on the innocent mind, the author is singled out to be a purveyor of obscenity, independent of the fact it may on the whole have a healthy effect.

The Halsey case on the other hand lays down the "dominant effect" standard for defining obscenity. Judges Augustus N. Hand and Learned Hand elaborated upon the "dominant-effect" standard in the Halsey Case judgement. The thesis was expounded in the following words: "In applying this test, relevancy of the objectional parts to the theme, the established reputation of the work in the estimation of approved critics, if the book is modern, and the verdict of the past, if it is ancient, and persuasive pieces of evidence; for works are not likely to sustain a high position with no better warrant for their existence than their obscene content"[13] (United States *vs.* One Book Called "Ulysses").

The criterion of 'the relevance of the objectional parts to the theme' is impeccable, but there can be argument about the remaining criteria. The credit given to the 'approved critics' seems to be questionable. A work by a budding author may take time to be noticed. Nonetheless the "dominant-effect" standard was an advance over the *Hicklin* case. This is seen at its best in *Ulysses* case elaborated in the following pages.

B3 COURT CASES REVIEWED

Lady Chatterley's Lover has equally become a *cause célèbre* in the history of censorship. The final version of the novel was published in 1928. The unexpurgated edition continued to be circulated surrpetitiously for next three decades or so, public opinion in favour of lifting the ban was gradually built especially in the English-speaking world. The novel had begun to have an acceptability gradually, due to changing social mores. The standing of D.H. Lawrence as a grand literary figure was an additional advantage in favour of lifting the censorship.

The real battle had to be fought in the courts of law. The British, American and Indian law courts reviewed the situation in quick succession. There were four court battles fought within the span of a decade or so.

The lead was provided by the British judiciary, which is a landmark judgement ordered lifting of the ban twenty-six years after the book was completed. The landmark year was 1954. Only after five years of the British judgement, the American courts allowed free circulation of the novel through postal services. The position was however not thoroughly clarified through this judgement in the context of federal system of the United States. Credit is to be given to the Grove Press for fighting the battle against censorship in this and several other instances.

The Bombay High Court and the Supreme Court of India took a conservative view of the situation, while reviewing the petition for the import of copies of *Lady Chatterley's Lover* by a Bombay bookdealer. The courts in both the instances decided against the lifting of the ban. That the Indian public opinion had not been built to sufficient crescendo was the reason for the maintenance of *status quo.* Social environment in India was the main determinant in the unfavourable decision.

Along with the case of *Lady Chatterley's Lover* should be considered *Roth* v.*U.S.* due to their striking similarity. Its timing also coincided with the more of the famous case. The five cases that need to be scrutinized at great length to place

the debate on the appropriateness of obscenity in a proper context are as follows:

1. (1954) Regina v. Martin Seeker and Warburg. *Weekly Law reports* (1954), 1138-43.
2. (1957) Samuel Roth, Petitioner v. United States of America (no. 582), June 24, 1957, *United States Supreme Court Reports,* October term, 1956, second series, v. 11, U.S. 352-4.
3. (1959) Grove Press Inc. *v.* Christianberry, 175 F. Supp. 488 (S.D.N.Y. 1959) (Justice Frederick O.P. Bryan).
4. (1962) Ranjit D. Udeshi and others, Applicants *v.* The State, Opposite party, Criminal Revn. Appn. No. 1149 of 1961, D/6-2-1962 (Patel and Chandrachud, J.J). AIR, 49, 1962, 268-74.
5. (1965) Ranjit D. Udeshi, Appellant *v.* The State of Maharashtra, Respondent. (P.B. Gajendragaadkar and others). AIR, 52, 881-91.

B31 OBSCENITY VIEWED CONCEPTUALLY

The battle turned around the definition of obscenity. *The Hicklin Test* seemed to be the barometer by which all the definitions were tested. The process of historical evolution of social norms in different milieux and times and places is best viewed in that context. It is proposed to discuss the pros and cons of all decisions concerning *Lady Chatterley's Lover* and the *Roth* case in respect of the concerned cases. Before doing so it is proposed to collectively view the issue in conceptual terms. The concepts to be reviewed include sexuality, sensuality, obscenity and pornography. Since the law recognizes obscenity as the only acceptable norm, most of the following discussion shall be confined to examining the concept of obscenity.

D.H. Lawrence made a great play to differentiation between sexuality and sensuality. Sexuality to him was culturally bound and not acceptable for the same reason. It reminded him of false consciousness, bound as it was by false cultural values.

Sensuality was in his view a prejudiced interpretation of life. Sensuality, on the contrary, was most acceptable to him; it was natural to man as an animal instinct, being "rooted in a primitive apprehension of one's relation with universe, with woman and with man".[14]

D.H. Lawrence seemed to have reversed the positions because in normal circumstances, sensuality was a natural instinct, thus spontaneous to all human beings. Sensuality was culturally bound and it was to be cultivated as a discipline. In other words, sexuality comes to be accepted when it gets culturally integrated so as to be normally acceptable. At this stage animal sexuality gets transformed into sensuality by acquiring cultural characteristics.

Everything turns out to be topsy turvy in the world of D.H. Lawrence. Further confusion is added when Jean Genet ("a professed immoralist") confessed: "I now think that if my books arouse readers sexually, they're badly written, because the poetic emotion should be so strong that no reader is moved sexually. In so far as books are pornographic, I don't reject them. I simply say that it lacked grace".[15]

B32 PORNOGRAPHY DEFINED

What about pornography? The distinction between what is pornographic and what is not pornographic is hard to define. The term is hard to be delineated within a well-defined parameter. Definitions have a tendency not merely to describe, but also to judge. Judgements involving moral values ultimately dominate the scene. Netural definitions are not possible because of the human tendency to make value judgements.

The nearest definition of pornography in which it is viewed as "the representation of directly or indirectly erotic acts with an instrusive vividness which offends decency without aesthetic justification".[16] This definition overloaded with value judgements bristles with as many difficulties. What is aesthetic is hard to define in the context of the millieu and the individual's cultural background. As Justice Frankfurter has rightly

mentioned the definition of obscencity and pornography is time bound and is further subject to the intellectual and moral climate of society.

Pornography in any case is not relevant in the context of law. Terms "obscene" and "obscenity" are used solely to refer to the legal concept of prohibited sexual material. The use of the term "pornography" is best avoided because it appears to have no legal significance and because it most often denotes subjective disapproval of certain materials, rather than their content or effect".[17]

While obscenity is properly concerned with the content proper of the document, pornography is preoccupied with the larger moral issues resulting from the resutant situation. Willy nilly the discussion proper about sexuality comes around to obscenity. This demarcation is not so simple in actual practice as evident from the above statement. All that can be said at this stage is that the matters have been somewhat simplified through the legal definition.

B33 OBSCENITY IN LAW

Hicklin Test is the ultimate in legal definition of obscenity. It is either adopted fully or in parts or elaborated with certain degree of elaborations. *Halsey test* has attempted to supplant it. It has eventually come to terms with certain amount of cosmetic elaboration. The Indian courts being conservative have dittoed the *Hicklin Test.* While the *Hicklin Test* has achieved a considerable degree of acceptability, the same cannot be said about the definition of obsenity.

There have been definitions galore of obscenity. It is entirely due to the conceptual confusion. The same situation is not unexpected. It is not unusual. The situation is inherent in the dynamic situation. The concept of obscenity keeps changing with varying social mores.

Attempting to define obscenity is a difficult task as it is there are no acceptable standards for the same and "since those standards do not readily lend themselves to generalized

definitions, the constitutional problem in the last analysis becomes one of particularized judgements".[18] This is no less true of contemporary judgements.

The United States Supreme Court delivered multiple decisions on March 21, 1966 on the issue of obscenity. The multiple decisions involved the *Ginzburg, Mishkin* and *Fanny Hill* cases. No wonder the position was more confused after the judgements were announced than before it. This goes to establish that the judiciary is subject to as many whims and fancies as any ordinary human mortals, except that their pronouncements are presumed to be adorned with subtle judiciousness.

There is the famous poetic stanza of Coleridge which goes like this: "Water, water everywhere, but not a drop to drink". Similarly the concept obscenity is examined, scrutinized and analyzed to no effect. There is also a simplistic approach of the Indian courts in (1965) *Ranjit D. Udeshi* v. *The State of Maharashtra*, wherein it was stated that "the word obscenity is really not vague because it is a word which is well understood even if persons in their attitude to what is obscene and what is not". The law as the defender of the faith in the wise words of the Supreme Court attempts no more than to "promote decency and morality".[19]

B4 INDIAN COURTS ON OBSCENITY

(1965) *Ranjit D. Udeshi* v. *State of Maharashtra* does not resist the temptation to differentriate between obscenity and pornography. In this view "the latter denotes writings, pictures etc., intended to arouse sexual desire while the former may include writing etc., not intended to do so but which have that tendency".[20] As a logical corollary, "Both, of course, offend against public decency and morals but pornography is obscenity in a more aggravated form". This is not a definition proper. It is more of an explanation, intended to indicate the effects. The proper causal explanation is thus missing from the statement. The court's point of view is an perspective of an ordinary man

in the street.

The Supreme Court judgement seems to define by the resultant situation, that is, in other words, by treating sex "in a manner offensive to public decency and morality (and those are the words of our Fundamental Law) judged by our National Standards and considered likely to pander to lascivious, prurient or sensually precocious minds, must determine the results."[21]

These words have been quoted from the judgement delivered on behalf of the court by Hidayatullah, J. in the case concerning importation of copies of *Lady Chatterley's Lover* from abroad. Obviously, reliance was being placed on the *Hicklin Test*, by which motives were not relevant, as were the consequences. Since no attempt has been made in the judgement to define obscenity precisely and no standards have been laid down, the judgement is of particularized nature.

B5 AMERICAN CONTEXT

The British Courts display pragmatism (the usual British national trait) in expounding upon law. The Indian courts of law are contented to follow their example due to historical heritage. The American courts on the contrary are more interested in defining matters. The judgements follow from the precise definitions. The search for definition of obscenity has been a major preoccupation of the highest courts in the United States.

Obscenity has been legally defined by the American courts as "tending to stir the sex impulses or lead to sexually impure and lustful thoughts". It has to be tested by the courts by "its effect on a person with average sex instincts". The *Ulysses* judgement is based on the same premises. The first part of the statement about obscene material "tending to stir the sex impulses" also implies an adverse judgement in the definition. The interpretation may be considered astonishing in the present context. Time is said to be the greatest healer. This assertion is no longer valid. There is any amount of literature available in the field of psychology (especially sexology) which not only

approves but encourages all tendencies to stir the sex impulses. Indeed the same is said to be the prerogative of any normal human being with healthy physiological sex instincts.

In (1954) *Regina* vs. *Martin Secker and Warburg,* the judge placed the whole issue pithily by observing that "babies are not born in this world, be they of either sex, dressed up in a frock coat or an equivalent feminine garment".[22] To come to think of it, the best of the literature like *Lady Chatterley's Lover* at its best tends to stir the sex impulses of an average human being. Such are the trend setters.

B51 AMERICAN LAW INSTITUTE DEFINITION

The other part of the definition about sex impulses leading "to sexually impure and lustful thoughts" connotes value judgement. What is pure or impure sexual impulse is again a matter of opinion or judgement. It has to be viewed in the societal context. Times change, so do the locale and situations. When viewed in terms of theories of psychoanalysis and the role of the subconscious, such impulses of doubtful validity on surface begin to look meaningful.

There has been a gradual trend in granting respectability to irrational impulses in psychological literature. *Lady Chatterley's Lover* was indicative of the same trend. It seems to be a marriage of the literary expressions of D.H. Lawrence with the thought of Sigmund Freud. That both of them were contemporaries is a point worth noting.

To get back to the mainstream argument about the definition of obscenity in the American context, consideration must also be given to the definition of obscenity by the American Law Institute in its Model Penal Code: "A thing is obscene if, considered as a whole, its predominant effect is to prurient interest, i.e. a shameful or morbid interest in nudity, sex, or excretion, and if it goes substantially beyond customary limits of candour in description or representation of such matters".[23]

The foregoing definition goes beyond the *Hicklin Rule* (1868), because the test of obscenity lies in considering the effect as a whole. There is a certain degree of liberality

indicated in the interpretation. This seems to have become the norm in American judgements on obscenity. The stress is on the intrepretation of prurient interests, a lead that was followed in the landmark judgement on the *Roth* case in 1957.

B52 AVERAGE PERSON RESPONSES

In the court judgement about *Lady Chatterley's Lover* in (1959) *Grove Press* vs. *Robert K. Christenberry* (concerning postal freedom), the definition of obscenity as given by the American Law Institute has been approvingly employed for analysing the various facets concerning obscenity. Three facets have been singled out in the definition, of which one of them has been mentioned earlier. To recapitulate the same, a book is to be viewed as a whole and it is, in other words, not to be judged by excerpts or isolated passages. To a considerable extent, this provision is an advance over the *Hicklin Test.*

The other two interprolations are as much significant. The first one concerns judging or appraising the material "in terms of its effect on those it is likely to reach who are conceived of as the average of man of sensual impulses, or as Judge Woolsey says, "What the French would call l'homme moyen sensual".[24]

The attention is to be devoted to ordinary human beings with normal sexual impulses and not as to the effect on extraordinary human beings, persons of high calibre interest or those with special or abnormal interests. It is the general reader who is recognized as the barometer. Whether *Lady Cahtterley's Lover* or any similar piece of writing are intended for a literary audience or they are to be adjudged by their sensibilities is not considered too important in the present context.

The proper judge seems to be the ordinary human being with average capabilities, whose responses are likely to be effected by the societal environment of the moment. The responses of a person with literary sensibilities as compared to the average person (representing the mass) should not get neglected in the definition of obscenity.

B53 PERSON OF AVERAGE CAPABILITIES

The third clause about societal limitations is related to the second one. After all the responses of a person of average capabilities are delimited by the environmental factors, his critical faculties by being normal are limited and circumscribed by his average abilities. He is likely to be a man lacking in convictions and contented to be directed by counterveiling pressures, such a person shall find it convenient to go with the majority.

The circular argument may be put in the following manner. The law is generally a barometer of social realities. Populace is the correct barometer of social realities. There is thus a close relation between social realities and populace. Populace represents the *status quo*. It is thus disinclined to support any innovative cause, because those fall outside its framework. Literature of good quality is invariably juxtaposed with social realities of *status quo* order. Innovative literature is by definition anti-establishment. Law being emblem of *status quo* as neglected in social realities is potentially in conflict with good-quality literature.

Normally a piece of fiction like *Lady Chatterley's Lover* being innovative and no-respector of social realities does not measure up to the preposition. The book should not "exceed the limits of tolerance imposed by current standards of the community with respect to freedom of expression in matter concerning sex relations".[24]

While in the *Grove Press* decision, *Lady Chatterley's Lover* was absolved of the charge of obscenity, paradoxically enough, the novel does not measure up to the current standards. The book was absolved but not for the reasons adduced in the three clauses detailed above. The decision in favour of the novel resulted from the support extended by the intellectual community as a whole. The average person certainly does not fall in that category.

B6 ROTH CASE, circa 1957

The controversy generated around *Lady Chatterley's Lover* in the media and through court cases, and, additionally, due to the magnetic personality of D.H. Lawrence, besides considerable merit of his literary works, has helped to place the novel in the centre of the stage. In fact the court decision in the *Ulysses* case is a landmark on laying the ground for the historic decision in the case of *Lady Chatterley's Lover.* There is however much more meat in (1957) *Roth* vs.*U.S.* case which came before the U.S. Supreme Court and has been before the public eye since then.

The best of the judicial minds of the United States were involved in the landmark judgement. Justice Duglas, along with Justice Black, was involved as usual in penning a note of dissent. The judgement and, more so, the note of dissent, are both historic pronouncements. As one looks back after three decades and plus a few years, the relevance of the note of dissent to contemporary times becomes highlighted. It may not be an exaggeration to say that the dissidence in court judgements, along with the literary dissidence, (as evidenced in writings like *Ulysses* and *Lady Chatterley's Lover)* is the real truth.

Nothing should however detract from the fact that the majority opinion in the *Roth* case was no less weighty on certain points. The *Roth* case was an advance over the previous judgements. It also acted as the beacon for the obscenity cases in subsequent years.

The road from the *Hicklin Test* of 1868 to the *Roth* case of 1957 is a long one but a celebrated one in the legal annals. In a manner of speaking, if the former is said to be the beginning of the road for the debate on sensitive terms concerning sexuality, the latter is the end of road. After 1957 a virtual Pandora's box has been opened. There is now as much concern in protecting fundamental rights to publish, circulate and read, as much in discouraging the unending flow of what at its best may be termed as sheer smut.

B61 SAMUEL ROTH

Samuel Roth is a name to be reckoned in the world of censorship of erotic literature. He was a many-splendoured personality combining the roles of a poet, publisher and the dealer in erotic literature. He was a man of great tenacity who fought many public battles in the cause of obscenity. He was by no means a purveyor of smut literature, as much as a fighter in the cause of unfettered freedom to publish, distribute and sell books. He was the first to bring out the first pirated edition of James Joyce's *Ulysses.* He was sentenced to thirty years of imprisonment. (1957) *Roth* vs.*U.S.* is his contribution in the cause of so-called obscenity.

The United States Supreme Court delivered an historic decision on June 24, 1957 vindicating Samuel Roth. It is to be remembered that Samuel Roth was not fighting in the cause of obscenity, but the freedom to publish, distribute and sell literature, with the reader of the book enacting as the final arbiter.

It shall be enough to quote Justice Stewart in his pronouncement in the *Ginzburg case* (1966) to clinch the argument: "Censorship reflects a society's lack of confidence in itself. It is a hallmark of an authoritarian regime. Long ago those who wrote our First amendment charted a different course. They believed a society can be truly strong only when it is truly free. In the realm of expression they put their faith, for better or for worse, in the enlightened choice, free from the interference of a policeman's intrusive thumb or a judge's heavy hand. So it is that the Constitution protects coarse expression as well as refined and vulgarity no less than elegance".[26] The pronouncement quoted above is most relevant in the present case.

The *Ginzburg case* however anticipates the Roth decision by at least nine years. Justice Stewart was certainly in line with the dissident opinions of Justices Black and Douglas.

B62 REDEEMING SOCIAL IMPORTANCE

Justice Brennan speaking on behalf of the Supreme Court in

the *Roth* case laid down an important criterion for proscription of a document. Obscenity must be judged by national community standards. More importantly, a work cannot be proscribed unless it is "utterly without social importance". Justice Brennan however stressed that "all ideas having even the slightest redeeming social importance–unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion–have the full protection of the guarantees (of the U.S., constitution, especially the First Amendment), unless excludable because they encroach upon the limited area of more important interests".[27]

Justice Brennan clinched the argument by asserting that "implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance". An obscene work has obviously no constitutional guarantees, a fact that is obvious to all. The criterion of social importance involves value judgements. The criterion of social importance is however not spelled out. No standards are laid for the purpose in the judgement. The criterion of literary significance must be implied in the larger criterion. The concept of social importance subsusmes literary significance of a work.

How to spell out social importance of a piece of writing? Who is to judge it? The trouble with the criterion of social importance is that for all practical purposes the judge and the executioner turn out to be the same. Salman Rushdie's *The Satanic Verses* is an instance of the kind. This criterion along with other criteria came to be elaborated in the subsequent judgements.

B7 THREE TESTS

(1957) *Roth* vs.*U.S.* and *Alberts* vs. *California* are to be viewed in the same light. The first important test laid down about obscenity was of being "utterly without redeeming social importance". This observation could not be sustained in vacuum. For that purpose it was essential to knock down the *Hicklin Rule* test. This was duly done in both the cases that came

before the Supreme Court consecutively.

The new test replacing the *Hicklin Rule* was laid down as follows: "Obscene material is material which deals with sex in a manner appealing to prurient interest, and the test of obscenity is whether to the average person, applying contemporary community standards, the dominant theme of the material appeals to prurient interest".[28] *Roth* opinion and subsequent decisions have thus laid down three tests for judging obscenity:

1. Whether the material is *utterly without redeeming social* importance.
2. Whether to the *average person,* applying *national community standards,* the dominant theme of the material appeals to the *prurient interest,* and
3. Whether the material is *patently offensive.*

The average person is not innovative by inclination. He is thus made to sit over judgement over unorthodox and controversial ideas and bold themes. Such a test when applied strictly shall result in the suffocation of all innovation duly backed up by the highest-level judicial pronouncements. The national community is the vaguest concept possible, likely to come into conflict with regional and local interests. The prurient interests are hard to define. The line of demarcation between abscene, pornographic, erotic, prurient, sexual and sensual is so thin that it cannot be defined precisely. At the most it may be done locally. Same is the situation with regard to what is patently offensive.

B71 DISSENTING NOTE

The concept of redeeming social importance was a step forward from the earlier judicial position on obscenity. It was under this clause that the controversial novels like *Lady Chatterley's Lover, Tropic of Cancer* and *Fanny Hill* found their redemption. They were, in other words, no longer the

victims of censorship.

Nothing however daunted three judges of U.S. Supreme Court from dissenting from the majority opinion in *Roth* case on grounds of freedom of expression (including the right to dissent). Justice Douglas stated the dissenting opinion, with Justice Black concurring with him. Justice Douglas has always been forward-looking in his judgements and certainly in the battle between "The literati and the Philistines". He as usual likes to be counted on the side of the Philistines.

The literati are the ones who have always laid down literary standards. By implication they have come to be accepted by the society. The relationship between the literati and the Philistines (the average person or common man) has been a dialectical one.

Justice Douglas having taken the dissenting option found everything abhorent about, the three tests laid down by the *Roth* case. In his dissenting note he has provided a step-by-step rebuttal as well as a rationale for the position taken by him. The major criticism has been in respect of 1. 'redeeming social importance', 2. 'undesirable impact', 3. 'current moral standards of the community', 4. 'conscience of the society'. and 5. the 'purity of thought'.

In ultimate analysis, in his view law is not merely a reflection of contemporary social standards (by which everything comes to be measured), but it is intended to be forward-looking to the extent of providing rationale for unorthodox thought. Law at its best is not intended to be a follower but a leader providing guidelines for the rest of us.

B711 UNDESIRABLE THOUGHTS

Justice Douglas has sought to puncture holes into the arguments presented in the majority judgement. So-called obscene literature is said to appeal to the prurient interest of human beings and thus it is patently offensive to the national community standards of the average person. The undesirable impact of such literature is emphasized. The undersirable impact on thought is not the

same thing as the liability to an unlawful act. In other words, potentiality of an act is a wrong criterion.

The undesirable impact may lie in the potentiality, 1. to influence the current moral standards of the community, 2. shocking or offending readers, and 3. stimulating sexual thoughts. Psychologists have found that stimulation in sexual thought may provide relief from potential aggressiveness in human beings.

In any case, sexual stimulation has been found healthy in all normal human beings. It has been the basis of all sensuality, the very foundation of works in religious fields, the arts and literature. To conclude on this point, potentiality is not the same thing as the objective conduct and in any case no direct relation has been established between the two, leave apart the fact, it has no basis in law.

Similarly the fact of influencing a change in the current moral standards of the community shall not bear any close scrutiny. Moral standards have a dynamics of their own throughout the history of mankind. The best of the literature is based on questioning the existing norms. Values are bound to come under severe attack. What distinguishes the same is its dialectical positioning.

Salman Rushdie has put it beautifully in his controversial novel *The Satanic Verses.* A creative author is one who believes in himself and likes to play the God. D.H. Lawrence has been doing the same in the best of his writings.

The compulsive physiological need like sex is an area of legitimate intellectual concern by literary authors, artistes and social scientists. *Lady Chatterley's Lover* is a fine expression of the same. It has been an intrument in changing our perception about sexual thoughts.

B712 CONSCIENCE OF THE COMMUNITY

The other point about which so much has been stated in the majority opinion relates to the conscience of the community. The tyranny exercised by the majority opinion or general

public opinion is more likely than not (especially on controversial issues concerning religion or morality) based on irrational considerations. The majority opinion may necessarily not represent the conscience of the community in essence.

Prophets are hardly respected in the lands of their birth. Innovative ideas rarely win any majority votes. Sex is a very sensitive question and touches upon the raw because it is mixed up with religious sensitivties. Community censorship may turn out to be the worst form of censorhsip in actual practice.

In the opinion of Justice Douglas, in the battle between the literati and the philisitines the latter is bound to win instantaneous battles. The philistines may also win the war in the long run, but at a tremendous cost to the cause. The instance of *Lady Chatterley's Lover* illustrates the dilemma.

The philistine representing the majority public opinion as ('repositories of the conscience of the community') were successful in keeping the censorship taboo for well over three decades on grounds of obscenity. The literati had to mobilize all their resources over a sustained period of time to have censorship lifted over the publication, distribution and sale of the novel.

The conscience of the community must be too irrational and pliable at the same to be reversed at a later date. This has been happening all the time throughout the history of mankind. There is also a certain degree of irony in the situation.

The medieval times have been the severest for sexual freedom. The Victorian primness was the extreme instance of the kind, so much so that the legs of dining-room tables were required to be covered to maintain the strictest standards of primness and decorum.

The contemporary times are in a way throwback to the ancient times with their relaxed atmosphere regarding sex. The concern of Justice Douglas about the conscience of the community being 'too loose, too capricious and too destructive' of freedom of expression in censorship matters is to be fully endorsed.

The concern with preserving the purity of thought in sexual matters is too spurious an argument in the opinion of Justice Douglas, as the other arguments concerning the undesirable impact on current moral standards and preserving the conscience of the community. The preoccupation with 'arousing of sexual thought' through obscene literature is thus not considered ligitimate. It is a normal day-to-day occurrence common to adults in all climes, times and environment.

Even Mahatma Gandhi failed to fight his natural and compulsive physiological instincts. He fell a victim to it in his old age due to his magnificent obsession with sex. The best of the literature is a true reflection of the instinct. This has turned out to be the major preoccupation of literature as much of the society.

Justice Douglas is neither particularly concerned with it, nor he has to say much about the concept of 'redeeming social importance' (due to its particularized perspective). His major concern is with the absolute right to the freedom of expression-overriding other considerations. The judges are as much subjects of human susceptibilities as the rest of us.

Such being the case, any particularized interpretation of the concept of obscenity (in the absence of any objective standards) shall give an handle to censorship and misuse of state power for all practical purposes sanctioned by law.

Chapter 9

Ideology of D.H. Lawrence

C0 SEX MYSTIQUE

D.H. Lawrence began *Lady Chatterley's Lover* in 1926 and wrote two versions of the same. The final version came out two years later. He was dead of consumption by 1930. The last years were years of ceaseless activity. His *Sons and Lovers* is a greater work in many respects. *Lady Chatterley's Lover* became famous as well as infamous (depending upon one's perspective) instantaneously. He was puritan by his background and training.

While on the one hand he was obsessed by sex in his writings, he was instinctually a puritan. His interest in sex was "like that of a doctor who wishes to heal". He enveloped sex with a considerable degree of mystique, when he talked of the phallic against 'cerebral sex-consciousness'. No one has mentioned the striking similarity between his attitude to sex to that of Tantric philosophy. Sexual rituals play a major role in Tantrism, but those are subservient to the larger purpose.

There is also a tendency to shock in his attitude to sex. He was like a child rearing to be noticed by enacting the unusual. The determining factor to sex however remains his working-class background. Here was a son of miner with domineering mother. The glimpses of his early life are to be had in his novel *Sons and Lovers.* While miner's was a man's world, he was domineered by his mother. The father however seemed to be a distant figure.

Romantic aura and certain mystique was invested in his perspective of his father. Too much familiarity with his mother

bred a feeling of contempt and indifference towards the female kind. He also barely tolerated his life-long companion and wife in Frieda Lawrence. The world view of the miner's son is of male domineering. The philosophy is very much evident in his controversial novel *Lady Chatterley's Lover.*

Apart from the male domination, his novels reflect underlying class conflict. Relationship between Lady Chatterley and her working-class lover is not only a triumph of sexuality, but equally an assertion of identity by the working class. There is not only a feeling of equality but of superiority, thus reversing the traditional relationship. D.H. Lawrence was speaking on behalf of the whole working class through the working-class lover. Needless to say, he was also asserting his male superiority at the same time. Lawrence was undoubtedly a male-chauvinist pig and an unlikely darling of modern-day feminists.

C1 SELF-EXPRESSION

The importance of *Lady Chatterley's Lover* lies in the fact of it being the most intense self-expression in the form of the novel. It may be a bitterly distorted vision of the world. It is nonetheless a "brilliantly defiant expression of his soul." D.H. Lawrence was a sick man when he wrote the novel. He died barely two years after he published the novel. His body was gradually being consumed by consumption in the advanced stage. On the top of that he had a tortured soul.

Henry Miller has called him a prophet who expressed himself through parables and employed symbolism throughout his writings. He found it difficult to communicate with others. His messages; were distorted in transmission and thus he found himself amidst controversies, which were endless and time-consuming and thus "there is no other way of making clear his message, he does the crude and obvious thing, he performs a miracle for the crowd–he gives us a genital banquet".[29] Human body and its reproductive functions become the central preoccupation in his scheme of things.

The physical body is reinforced through mysticism, thus

crediting it with spiritual qualities. He must have been inspired by ancient civilizations and cultures of people living in contemporary times. Sexuality is integral to their ways of life. The temples of Khajoraho, Konark and indeed the Krishna and Siva cults in Indian civilization speak volumes in favour of such thesis. Sexuality being the very foundation of Tantric cults, it is surprising for D.H. Lawrence to advocate similar philosophy, couched as it is in intensely personal terms.

D.H. Lawrence was thus breaking loose from the Victorian mores. He did not enunciate any new doctrine, but humanism was implicit in his writings. Physical body was not viewed by him as a mere physiological being. He reinforced the body with a certain mystique. It shall thus not be wrong to say that he was the proponent of the mystical body as expressed through his fictional and other writings. In the words of the literary critic, Frederich Carter, he had a "vision of each man as the microcasm holding the pattern of the universe within himself, that held the deepest fascination for him".[30] He seemed to combine physiology, psychology and cosmogony in his writings. He seemed to be enunciating the doctrine of *Kundalini* without being aware of it.

C2 CREATIVE WRITER AS ARTIST

Creative writer is above all an artist. His creativity lies in his innovative capabilities. He is a restless soul experimenting with new ideas and new situations, treading paths which have hitherto remained uncharted. He dares to do the unusual by defying conventions and shocking the prudes, constituting as do the overwhelming majority.

The creative writer likes to experiment by indicating his personal and intense involvement. He involved himself deeply into the experimentation, thus inviting personal criticism. He is always in the firing line, defying the odds against him, facing those at personal risk and finally overcoming the insurmountable. The battle may prove to be prolonged and vindication came about posthumously. Never mind the overwhelming odds.

D.H. Lawrence was required to retrace the steps during his life time. He stood the ground very well. His creativity proved to be his nemesis. The example of *Lady Chatterley's Lover* is before us.

So much recognition came to D.H. Lawrence during his life time. His literary reputation was a shield protecting him from senseless attacks on his personality, his work and personal reputation. It took nearly three decades before the ban on the censorship of the novel was lifted after waging relentless battles in court rooms. The rehabilitation of D.H. Lawrence took place long after his death.

The creative author in him may have withstood the onslaughts but psychological scars must have been left on his subconscious. Such scars are hardly visible to the naked eye, but those certainly leave psychological marks. The price of creativity is distortion of the personality. His mother and his wife were major influences in his life. Both of them were at the receiving end. This must have worked through a process of transmution in him.

The price of creativity is a heavy one to pay, especially when the creative agent attempts to upset the balances and directly attack the sacrosanct with no words minced. Every response has an equal and opposite counter-response. The intensity of attack launched in D.H. Lawrence's *Lady Chatterley's Lover* resulted in a counter response, especially because he was attempting to touch upon the raw on moral issues.

C21 VIRILITY OF CREATIVE POWER

Creativity has a considerable element of virility integral to it. The creative writer or artist can't afford to be on defensive. He has to remain on constant alert by remaining in a state of offensive formation. He has to be a master of strategy and tactics. There is an element of evangelist in him. Lawrence possessed what has been appropriately termed as 'the virility of his creative power' in abundance.

One is reminded of great historical characters like Martin

Luther who changed the course of history through the sheer power of intellectual capabilities combined with their evangelic zeal. H.D. Lawrence was a creative writer of considerable merit, who was equally concerned with changing the world through his writings. The creativity of his writings is combined with societal objectives.

His use of sexual symbols as a cult was a deliberate act. The power of literary expression was employed effectively by him for ideological considerations. Sexual expressions were no longer to be confined to the barrack language. Those were to employed as normal expressions. D.H. Lawrence was seeking to marry the language employed privately on day-to-day basis with the literary expressions.

Normally kudos should have been paid to any person trying to bridge the gap between the normal and the abnormal. Such was not the fate of D.H. Lawrence who was sought to be pilloried by the establishment. He was however made of sterner stuff. He counter-responded by shocking the establishment by his ideological stance and literary writings. In fact his literary writings became the vehicle of his ideological stance.

His literary capabilities are of such high order that his ideological stance seemed so effortless as to go unnoticed by the uninitiated. His ideology has been of great interest to literary critics, but his literary capabilities have a universal appeal. In fact, D.H. Lawrence is growing in literary status with the passage of time. His idoelogical stance is of passing interest, because phallus symbols have lost their novelty and are now being used as a matter of fact by one and all.

D.H. Lawrence is thus an artist of considerable merit. He is however an artist with difference. He combines that role with that of a preacher. It is his preachings that have come to be widely noticed through sheer curiosity. Increasingly the ideological veneer is wearing thin. His writings have considerable literary merit. This helped considerably in winning the censorship battles. In this context, his widely noticed novel *Lady Chatterley's Lover* is certainly not the greatest.

C3 PROPHETIC ROLE

D.H. Lawrence defied conventions. This included the use of four-letter words and graphic description of sexual act in *Lady Chatterley's Lover.* His main characters in his novels are patterned after him. They like to be defiant and breakers of idols. It is not merely out of commitment that the likes of D.H. Lawrence take on the world. There must be an element of exhibitionism in him at the subconscious level. This also may indicate lack of confidence in himself at the underneath level. Aggressiveness is usually an indication of the same.

D.H. Lawrence may have to be subjected to psychoanalysis of his character. Certain aggressiveness, impatience, intolerance and contempt of others are the qualities that characterise him. In a letter to a friend, the worst in him comes out in issues involving disagreement. He refuses to see that other side of the coin. He has no hesitation in telling him in the rudest manner possible: "You tell me I am wrong. Who are you, who is anybody to say I am wrong? I am not wrong".[31]

Having said all this, it has to be recognized that his super confidence in his abilities arose from the truth of his pronouncements. His ideology backed up his super faith. He saw himself in the role of not only a mere evangelist but a prophet of new order.

He seemed to be supremely unconcerned with the present. His eyes were set on the future course. He had no doubt that the future was bound to more than vindicate him. He was thus contented with shocking all those who populated the present. It was considered sufficient to shock them out of their slumbers, confuse them and upset them to no end.

The note of confidence bordering on contempt is clear in the following prophetic pronouncement: "I write not for a few months ahead or for next year, but for the future. What is true cannot be made null by an event . . . . I see further than others . . . . And if no one else has the courage to see and to tell what it is he sees, I mean to do so. I have a *right* to criticism".[32] He thus views himself in the role of the evangelist

of a new order.

It is the individual against the mass that finds himself confronted in his writings, which also personified his life. The natural rights of the individual were sacred to him and indicate an inborn antipathy towards societal conventions and traditions. Lawrence was a born fighter for future causes. The events seemed to bear him out.

C31 LIVING CORPSES

Lawrence was an intense person. He lived an intense life throughout. He was like a meteor that shone brightly and intensely. He was essentially a lonely person. He was respected but loved by no one. Such persons rarely survive far too long due to ceaseless activity on their part. Like the meteor, the last moments are the brightest. The highest intensity is felt about the time it is about to fade out.

D.H. Lawrence lived such a life. He passed away in 1930. His last decade was the most fruitful. Of his 12 novels (which are considered to be his principal works), eight were brought during the last ten years. This included three versions of *Lady Chatterley's Lover.* One year before his death, that is 1929, he completed six works.

He was a living corpse in the last years of his life, effected by his bad health, restless on account of his act as a wandering minstrel (minus home and hearth), and, besides, shed and shun by the intellectual elite, but he went on merrily contributing to the corpus of world literature. The nearness of death must have spurred him on the further activity.

It has to be recalled that the final version of *Lady Chatterley's Lover* was completed barely two years he passed away. It is a product of his imagination in times of his physical incapacities. It is not the experience but power of imagination of a such body with remarkably alert mind one that speaks in the novel representing phallus symbolism. His aggressiveness and egoistic behaviour underline the urgency by the nearness of his death.

Impatience with the world as expressed through impious

words was a true expression of his being. That was a novel for a literary figure to do so by chronicling the actual words. Lawrence was merely recapitulating accurately what goes behind the closed bed rooms million times over.

Lawrence must have a clinical approach to matters sexual. It was earlier stated that D. H. Lawrence was a puritan in such matters in his actual life. He had a doctoral approach to sex. There is an absolute degree of objectivity among medical practioners. Similarly D.H. Lawrence had an absolutely clinical approach to describing sexual relationships in his novels.

He was however a doctor with difference. The secrets of his clients, characters in his novels, were not private but made public. That was true. Then literary figures are no doctors, as literary craft has no resemblance to medical jurisprudence.

He wrote the most memorable words about the fag end of his life. Those are about living corpses and death. He had begun to visualize the living as corpses performing their roles mechanically. Such corpses are mere abstractions, who appear to be lifeless. The only time they seem to stir is when confronted with dialectical situations. The unusual makes them feel uncomfortable.

C311 CENTRAL ISSUE OF LIFE

The living corpses get the greatest tribute from D.H. Lawrence in the following words: "Spectres we are to one another. Spectre you are to me, spectre I am to you. Shadows you are even to yourself. And by shadow I mean idea, concept, the abstracted reality, the ego. We are not solid. We don't live in the flesh. Our instincts and institutions are dead, we live wound round with the winding-sheet of abstraction. And the touch of anything solid hurts us. For our instincts and intuition, which are our feelers of touch and knowing through touch, they are dead, amputated. We walk and talk and eat and copulate and laugh and evacuate wrapped in our winding-sheets, all the time wrapped in our winding-sheets".[33]

In spite of his explicitness in sexual matters, those are not

the main preoccupation of D.H. Lawrence. He is concerned with the larger matters of life and death. The central issues of human existence are thus his main preoccupation. He is turning out to be a thinker among the *literati.*

There is considerable element of mysticism about his writings. On that account, it would be very foolish to argue about obscenity and pornography when dealing with D.H. Lawrence. Those who tried to read such ideas in his writings are made to look foolish as indicated by subsequent events.

All great writers are full of ego. Lawrence is no exception to the rule. The intensity of his responses arose from the inanity of the debate. The prophet in him naturally treated his critics with much disdain.

Death is said to be the great leveller. D.H. Lawrence finds solace in the world in terms of death. Corpses make their appearance aplenty in one of the finest pieces of writings by him. The nearness of death must have impelled him to put his best foot forward. The result has been the memorable quotation indicated above.

Seen in this light, it seems incomprehensible that it took 3 decades (after the publication of *Lady Chatterley's Lover*) for the intellectual elite to fight out the battles in courts of law for the lifting of censorship on the novel. It seems very odd in retrospect for such a situation to have come to pass. Lawrence dead than alive like the elephant is most effective.

C4 THE PHALLIC MYSTIC

D.H. Lawrence has been called "The Phallic Mystic". He was fascinated by the mystery called sex. He was like a child who made a great discovery. He was anxious to share with others to the point of petulance. He had to shock others to be noticed. It was imcomprehensible to him that, on the one hand, the physiological need like sex was in the blood stream throughout the adult life of all human beings, and, on the other hand, contrary to normal human inclinations, it was a great taboo throughout the centuries. While, on the one hand,

religious tratidion had made so much fetish of it during medieval times and since, the tradition during ancient times and among contemporary tribal societies, has treated sex with a certain degree of natural exhileration.

D.H. Lawrence has dared to bring out into open what has been enveloped into closet by social and religious convention and tradition. He faced so much hostility for standing out from the rest of the crowd. He enacted the Hercules to fight out "the blind pigs". He was in the minority of one who faced the mob throughout his literary career.

He was no doubt a phallic mystic. He was full of what has been termed as phallic consciousness. There was nothing frivolous about him in this matter. He may have been influenced by Freudian ideas, which came to fashionable about the time his writings appeared on the scene. Sigmund Freud and D.H. Lawrence are undoubted male pig chauvinists because both of them employed similar symbolism for explaining their own rationale.

Lawrence was however getting across a larger message, which has been appropriately stated by him in his letter to his Buddhist friend Earl Brewster that he had "put a phallus, a lingam you call it, in each of my pictures somewhere. And I paint no picture that won't shock people's castrated social spirituality. I do this out of a positive belief, that the phallus is a great sacred image; it represents a deep, deep life which has been denied in us and still is denied. Women deny it horribly, with a grinning travesty of sex".[34]

Lawrence was employing his phallic symbolism for putting across the message. Sex was no longer an end. but only a means in his scheme of things. Sex to him was the medium and not the message. He had come very near to the Hindu view of sex in ancient time. He was however unaware of the fact that the phallic symbolism is only a part of the story.

C41 FOUR-LETTER WORDS

D.H. Lawrence was essentially a puritan. He was not fond of

employing four-letter words. He was anxious to free the mind of its pathological obsession with sex. He would have certainly come out against the insensate use of four-letter words in contemporary literature. Such taboo words are freely employed for the sake of it and out of their context. D.H. Lawrence would have been on the other side. He may have found himself in the company of modern-day puritans and those generally against sexism. His approach was that of clinical doctor viewing things from outwards.

On the other hand, he was certainly by no means an advocate of eschewing so-called four-letter words. He turned the tables on his critics by investing sexual situations with tenderness so rare in contemporary literature. The sexual episodes in *Lady Chatterley's Lover* show Lawrence at his tenderest best. It may not be great novel but it has performed the important function of making so-called obscenity a respectable term.

In the words of a perceptive critic, "Lawrence habitually spoke not of sex but of the phallus as beyond sex. The sense of sexual experience as something to be passed through, as the prelude or initiation into a more satisfactory condition of life on the other side, is strong in him; so are the ideas of renunciation and chastity".[35] There is something of the Hindu in him.

There is considerable element of mysticism underlying his writings. There is also certain *vivre de joie* in matters relating to sex. There is a feeling not as much physiological freedom as psychological liberation. The tenderness in expression is of the order to be found in medieval poetry in Indian literature. Jayadeva is an example of the kind.

The feeling of freedom is however not spontaneous. It may have to do with his Christian background. His puritanism may have been derived from his domineering mother, who considered the seduction scene in *The White Peacock* indecent and who refused to believe that "to think that my son should have written such a story".[36]

The other differentiation from the Hindu concept lies in

supreme emphasis by him on phallic consciousness. The Hindu view of sex lays equal emphasis on *Shakti* (the female aspect). Lawrence lived during the times when the British imperialism was at its height. It would have been too much to expect for the imperial Briton to be conscious of the subtle differentiations. Lawrence must however be credited with the right instinct.

C5 LAW AND LOVE

All great literary personalities have an ideology. It is mostly subsumed in their writings. The difference between great and shoddy writings lies in the respective quality of subsuming the ideology or overplaying it. The great writers like Shakespeare and Tolstoy underplay the ideology. It comes out naturally in their writings. Socialist realism, *vintage* Stalinism, is an instance of the cacophony that is subsumed as ideology in literary writing, the art and other forms of culture. The great merit of D.H. Lawrence lies in the fact that he had devoted considerable thought to this matter.

The dichotomy between literary form and ideology has been called by him variously. It has been termed as the 'antimony between Law or Love', or, in simpler terms, the struggle between doctrine and tale. Both are essential to great writing but in appropriate proportion which cannot be laid down in pure and simple arthimetical proportion.

When Lawrence was queried as to whether he "intended us to read his books as novels or as treatises on the experience of spiritual and bodily awareness", he was clear in his mind and promptly responded that to "read them simply as stories we would not get much satisfaction from them".[37]

The response was then not to the fullest satisfaction. He made up for that lacunae by responding in the fullest measure in respect of the 'antimony between Law and Love' in an other statement: "Every work of art adheres to some system of morality. But if it be really a work of art, it must contain the essential criticism on the morality to which it adheres . . . The degree to which the system of morality, or the metaphysic, is

submitted to criticism within the work of art makes the lasting value and satisfaction of that work . . . If Aeschylus has a metaphysic to his art, this metaphysic is that Love and Law are two, eternally in conflict and being reconciled . . . The adherence to a metaphysic does not necessarily give artistic form.

"Artistic form is a revelation of the two principles of Love and the Law in a state of conflict and yet reconciled . . . . It is the conjuction of the two which makes form. And since the two must always meet under fresh conditions, form must always be different. Each work of art has its own form, which has no relation to any other form. When a young painter studies an old master, he studies, not the form, that is an abstraction which does not exist . . . he studies chiefly to understand how the old great artist suffered in himself the conflict of Love and Law, and brought them to a reconciliation . . . . It is the novelists and dramatists who have the hardest task in reconciling their metaphysic, their theory of being and knowing, with their living sense of being. Because a novel is a microcosm, and because man in viewing the universe must view it in the light of a theory, therefore every novel must have the background or the structural selection of some theory or being, some metaphysic. But the metaphysic must always subserve the artistic purpose beyond the artist's conscious aim. Otherwise the novel becomes a treatise".[38]

C51 IDEOLOGICAL ENCUMBERANCES

His ideology in ultimate analysis seems to be overbearing. This is no less true of his novel *Lady Chatterley's Lover.* From literary exhultation he tends to turn towards metaphysics. His concern with ideology orients him in the direction of mysticism in which there is considerable element of mumbo jumbo. His exposition of phallic consciousness seems appealing in the initial stage due to its initial novelty.

The ideological superstructure has very shaky foundations. Obviously D.H. Lawrence has neither any deep gounding in religious mysticism, nor any psychoanalytical theories, which

must have been the fashion about the time Lawrence was engaged in writing his outstanding fictional pieces. His acquaintance with Eastern religions, philosophy and mysticism must have been minimal.

His strongest point was his literary craft. He had the natural feeling for things. Here was an intellectual giant who was engaged in long-drawn fight with the whole world. Here was one man against the rest with an unending list of complaints, a restless soul who was not prepared to compromise.

He was in the process of experimenting with new ideas in his writings. He was remarkably perceptive. His world view was however of an individual, with bloated egoistic mind. He was impeable when it came to his literary craft.

His ideology was an entirely different cup of tea. The quality of his literary craft was very much affected by ideological explorations. The natural flow of language was interrupted by his evangelistic outpourings. While those were rare and far between in his earlier writiugs, those became a state of mind in his latter pieces.

His ideological outpourings are not to be discounted entirely. Those provide colour and verve to his writings. His literary craft has a distinctive colour due to ideological orientation. On the surface such statements give the impression of being contradictory. The dialectical situation is typical of D.H. Lawrence and indeed of all great writing. His admixture of literary craft and ideology results in diction uniquely typical of him. His writings came to be noticed precisely for the same reason.

What is distinctive advantage at one stage becomes distinctive disadvantage at subsequent stages. D.H. Lawrence was a step forward in one respect. Indeed he was a landmark and a step forward in one respect. He has been classed among the greatest literary figures of the world. There is also another side to the story. His ideological encumberances are indeed a burden at times. There is need for a balanced approach about him.

C6 HUMAN EXPERIENCE AND LANGUAGE

D.H. Lawrence has been called names by his numerous critics because he has talked of phallic symbolism as his ideology and has not hesitated to employ four-letter words in *Lady Chatterley's Lover.* The epithets are most colourful. A lexican could be compiled of the same. Those have included calling of Lawrence as 'sex-sodden' and 'sex crucified' man. He has been largely misunderstood on that account. He has given the rationale for the use of four-letter words in the following manner:

" . . . Real culture makes us give to a word only those mental and imaginative reactions which belong to the mind and saves us from violent and indiscriminate physical reactions which may wreck social decency. In the past, man was too weak-minded, or crude-minded, to contemplate his own physical body and physical reactions that overpowered him. It is no longer so. Culture and civilization have taught us to separate the reactions. We know the act does not necessarily follow the thought. In fact, thought and action, word and deed, are two separate forms of consciousness, two separate lines which we lead".[39] There is much of substance in what Lawrence has to say in defence of the use of shocking words by him.

His references to past and inhibited attitude to sexual matters in past have to be viewed in the context of Christendom. This has not been true of all cultural situations. This was certainly not true of all cultural situations. This was certainly not true of ancient Greek civilization. Nor it was applicable to many oriental civilizations, especially the Indian situation, where sexual matters are talked about uninhibitedly and with a high degree of exhilaration particularly in literature, the arts and religious scriptures. This is also not true of many tribal societies which the Christian missionaries have attempted to 'civilize' by introducing inhibitions in their normal relationships.

Similarly his assertion that word and deed have to be compartmentalized is hard to accept at its face value, because it flies in the face of realities. Mind is integral to the very process of action. There is also the closest relationship between

human experience and language. In the words of the critic, "for example, I can only distinghish things like flirting, courting, seducing, wooing, fornification, adultery, in language and therefore I can only perform any one of these deeds when I understand something of the language games in which they belong".[40] His basic argument however about word and deed being culture bound is impeccable. Their intensity or lack of it is largely defined by the cultural environment.

C61 PURITANISM EXPLAINED

As in *Tantra* sexual experience was only a means to an end. The sense of sexual experience was essential for reaching a larger goal. Lawrence has picturesquely described the experience of the 'phallus beyond the sex'. The similarity to yogic practice is striking, because in both instances the experience of life was for purpose of understanding life. Here is an instance of close experience of word and deed, as well as of experience and language. The other common feature is the concept of renunciation and denial. There is a strong element of puritanism that runs through his views, inspite of his bold verbal pronouncements. Lawrence has considerable imaginative power, multiplied manifold due to his physical ailments that bogged him throughout his life and virtually incapacitated him during his final years of life. Those were the years when his intellectual faculties had begun to achieve the heights.

He never felt comfortable with his sexuality, except in the company of characters in his novels. He talked uninhibitedly through them. One can imagine D.H. Lawrence giving out his innermost thoughts (all in his powerful imagination) through uninhibited conversation between Mellors and Connie.

In actual life, he was prim as a coy and shy virgin. There is the confessional statement of his relationship with a young girl in his young days: "I only wanted to be aware of her personality, her mind and spirit".[41]

The truth of the matter is that all young males with domineering mothers tends to have an inhibited relationship

with other women. Their acts of revolt in subsequent life by revolting against their mothers are simulated. The mother complex continue to maintain its stranglehold over them like the Banquo's ghost overshadowing Macbeth all his life. The famous story about his mother disbelieving about her son having attempted to write a seduction scene in *The White Peacock* shows considerable light on her shadows determining the life style of Lawrence.

His use of four-letter words and subserving his imaginative powers to delineate sexuality are seeming acts of revolt against his mother, but, in reality, surrender to her in word and deed. He continued to be inhibited in sexual matters in actual experience and his writings. His interest in sex was a bye-product of his involvement with human existence. After all, physiological needs for sex are as essential as hunger for food. Those are but natural and need to be clinically recorded in literature, the arts and religious scriptures.

C7 MAN OF SPIRIT

Lady Chatterley's Lover is not a great piece of fictional writing. It has come to be noticed due to an accident of history. The charge of obscenity has focussed so much attention on the novel. The literary world put its shoulders together on the novel. The literary world put its soulders together and decided to put up a magnificent fight. That the world is a village community in the right sense of the term was established due to the campaign in favour of *Lady Chatterley's Lover.* The most distinguished literary figures put up a defence in the court of law. The judges were effected to the extent of lifting the ban (however not in India) on the circulation of book long after it was published. There is a gap of thirty years between the two events.

The novel is thus an historical but not a literary landmark. It by no means reduces the importance of D.H. Lawrence. The novelist is much greater than the novel when the totality of his contribution to literature is considered. The trials of the

novel in British and American courts of law became infructuous because Lawrence the novelist was a difficult nut to crack as compared to *Lady Chatterley's Lover.* The charges of obscenity, pornography, sexuality and sensuality are harder to be levied in the context of D.H. Lawrence's totality of literary output than when considering *Lady Chatterley's Lover* as a novel in its splendid isolation. The summing up of D.H. Lawrence shall place the novel under consideration in proper perspective.

D.H. Lawrence was truly a man of spirit who claimed to look into the future. He believed himself to be right. There could be no argument about it. He was a self-confessed visionary who had within him a sort of answer to possible societal situations. To him a single man of determination was superior to the mass because he had the right answer to the right question. This egoistic point of view was tempered with his innate optimism. He was determined to change the world. He was essentially an ideologue who had the great advantage of combining literary qualities with ideological posturings. *Lady Chatterley's Lover* was an expression of that standpoint. The novel enjoined two forms of consciousness into one.

Thought and action and word and deed were sought to be integrated into one. The use of four-letter words, especially in the dialogue between Mallors and Connie (at the time of their sexual union) sought to bridge the gap between two forms of consciousness.

C8 OVERWHELMING IMPRESSION

He was in other words seeking to combine what he has described as the experience of spiritual and bodily awareness into his literary writings. *Lady Chatterley's Lover* was a fine example of that integration. He was not however contented with joining the two.

While he considered the sense of sexual experience as an essential step, it was not the end of the road. It was only a step in the right direction of achieving a more satisfactory condition

of life, D.H. Lawrence at the underneath was essentially a moral man. Morality was not end of the matter. He would have otherwise ended up as a teacher of moral philosophy. This was only a part of his being.

In his perspective the system of morality was essential to creativity in art. This he has termed as the principles of Love and the Law. There is thus a close relation between 'the theory of being and becoming' and 'the living sense of being'.

What gives distinction to his literary output is that every single piece of diction has its own form, so unique that it cannot be duplicated. *Lady Chatterley's Lover* is a fine novel because it is so different from other pieces of fiction by Lawrence. The novels of Lawrence are also entirely different from the output of other novelists.

Each work of fiction being unique, being determined by its distinctive form, distinguishes the good from the bad. By this test it can be stated without any fear of contradiction that he passes the test of the most distinctive form of *Lady Chatterley's Lover* as a literary piece. Its ideological undercurrents add mere embellishment to the form.

There are portions of the novel when the ideologue takes over and undoubtedly the novelist comes out poorly in those parts of the book. The overall impression is however overwhelming. It is due to the quality of form of the book. The very fact that D.H. Lawrence has grown in stature in hundred years and plus is a sufficient proof of the thesis. He has risen in his status while many writers have fallen by the wayside.

Chapter 10

Lady Chatterley in the Dock

D0 LADY CHATTERLEY AND COURTS

Lady Chatterley was required to make appearances in courts of law in the United Kingdom (1954), United States (1959) and India (1962 and 1965). The novel won hands down in the United Kingdom, backed up as it was by a galaxy of British intellectuals. The build up of public opinion enabled the ban on the publication, distribution and sale of the book to be lifted after a fight lasting more than two decades.

D1 BRITISH JUDGEMENT, circa 1954

The judgement while endorsing the *Hicklin test* was largely concerned with the larger issue of literary merit of the novel. The law seemed to put a seal of formal approval over what has been decided in the literary court of appeal. It was certainly a landmark judgement, but it hardly provided any enlightenment on the points of law. The law was left practically untouched, to be manipulated and interpreted in the *Roth* case by the American Supreme Court, especially in the dissident opinion as expressed by Justices Black and Douglas.

It must however be said to the credit of (1954) *Regina v. Martin Secker and Warburg* that it opened a Pandora's box, which still continues to be unwinded. Its significance lies in its pioneering character. It was world-shaking in the comparative sense of the term. It said what had remained unsaid and had to be stated formally. Its importance is to be recognized in the

context of the times. The decision of *Ulysses* had been made several years ago.

It did not have the required impact. The battlelines were drawn about *Lady Chatterley's Lover. Ulysses* was largely an unreadable novel. Lady Chatterley had a universal appeal of a kind. The common man, the man of average perception, was willy nilly drawn into the battle.

D11 SEX AND HUMAN EXISTENCE

The British judgement is built around the place of sex in human existence and the primary task of novel as a mirror to society. The judgement almost goes lyrical over the description of sex. While the book is "obviously and admittedly absorbed with sex", the judge as much handles the act of sex with reverence, so much so that "human race would have ceased to exist thousand years ago" but for the relationship between the males and female of the human species". The judge cannot resist the temptation by calling sex as "one of the great motive forces in human life".[42]

Judgement deals at great length with the place of sex in human existence. At times the argument looks like an act of polemics on the part of the judge. Indeed the novel *Lady Chatterley's Lover* is no less an act of polemics. The stream of polemics seems to run parallel in the novel as well as in the judgement. Polemics in both instances are not for the sake of it, but built integrally into the same.

Sex is shown to be a subject of absorbing interest to absolve the novel of the charge of obscenity. Sexual morality and literary expressions are built parallel into the novel as integral to the theme. The task of the judge is very much facilitated by the novelist. As a logical corollary to the argument and having placed sexual morality and literary expression as the backdrop, the judge goes on to clinch the argument by defining the task of the novel.

The Judge seems to go beyond his province by entering the literary domain. It is not the conscious of the community as

represented by the common man, but the conscious of literary community as the highest determinant that constitutes the barometer. It is thus the highest but not the lowest denominator as the determining factor. The judge seems to vote with his brain and not his legs.

D12 FICTION AS MIRROR OF SOCIETY

Novel has always been a mirror to the society of the day. The problems and difficulties that affect any contemporary society get reflected in fiction. It has been so since the nineteenth century. *Lady Chatterley's Lover* is equally a child of its times. Sex being a great motivating force throughtout history and affecting each and every adult and within the thinking of every normal or abnormal human being, its domain has largely been confined to conversations behind the closed doors. Thus a dialectical situation has existed for long.

D.H. Lawrence has attempted to assault the irrational taboo through the medium of his fictional writing. He has succeeded very eminently by enacting the true mirror of human realities. There is indeed a striking parallel between the writings of D.H. Lawrence and Sigmund Freud. Both of them have assaulted the secure walls of tradition from within and without. Coincidentally enough, both of them seemed to have made their appearance on the scene about the same time.

The dialectical situation seemed to have reached an apogee during the times of D.H. Lawrence, so much so that the transmutation of quantity into quality becomes inevitable. The controversy around *Lady Chatterley's Lover* and its resolution may have been coincidental, but resolution of the conflicting situation came because the times were ripe due to congruity between what is recorded in fiction and how it was taking place in actual life.

All literature becomes a bore when actuality in life and its recorded mention has a less and less relation between them. D.H. Lawrence was able to resolve the incongruity by assaulting

the citadel. His novel was true record of the society of his times.

In the words of the judgement, proper function of a contemporary novel was "to hold up a mirror to the society of its own day and place, to present a picture and a record of that society, its manners, customs, attitudes and thought for the information both of its own generation and of posterity, for the benefit that is the other societies separated from it in space or time".[43] The novel fits the bill exactly.

D2 DIALECTICS PERSONIFIED

Its standing is due to its literary merit as well as its importance as a symbol of change. The novel stands at the crossroads when the dialectics of quantity gets itself transformed from quantity into quality. The novel is most significant for bringing up ideological transformation in the mind of the literati and the general public alike. Sex was no longer a dirty work. It has become a subject of general debate and discussion.

Lady Chatterley's Lover has an ideological significance, much beyond its literary significance. It shall be remembered long as a historic landmark, long after its literary values are forgotten. The British judgement about the novel may not be one of the great judgements of all times; it shall however continue to be remembered for long as the historic milestone.

The judge is to be credited for his right perception by going to the heart of the matter directly. The remaining three judgements about the novel arrive at their respective pronouncements through twists and turns and those are equally marred by ifs and buts and doubts galore. The British judgement seems to be a triumph of British pragmatism over Indian obscurantism and American Germanic overtones of philosophical argumentation.

An important formulation in the judgement is that the licence which is a patent affront to a particular society in particular time framework, comes to be accepted as normal due to the "curious change of approach from one age to

another". The abnormal seems to be normal and normal passes off as below normal, thus coming to be barely noticed for its low intensity. It is a pity that the transformation in a dialectical situation in the novel is not viewed as a smooth process. D.H. Lawrence thus suffers for a cause.

D3 GROVE PRESS JUDGEMENT

Samuel Roth is a cult figure in publishing, distribution and sale of unorthodox literature with erotic orientation. In its quiet way Grove Press has built a great reputation as publisher of a series of books that have been suspectible to the frequent charge of obscenity. Grove Press brought out the American edition of *Lady Chatterley's Lover* after censorship had been lifted in the United Kingdom in 1954. The Grove Press dared the censors to subject the novel to scrutiny.

The way had been cleared for its publication with the constitutional issue on obscenity cases clarified by the Supreme Court in *Roth* and other cases. The decision on the *Roth* case (1957) fell between the British judgement (1957) and the American judgement in Grove Press judgement (1959). The judgement in the case of *Lady Chatterley's Lover* was greatly based on the *Roth* case and related judgements which have been recapitulated elsewhere in the paper.

The *Hicklin Test* is thrown overboard because the book is now required to be judged as a whole. The honesty and motives of the author in writing the novel are taken into consideration, along with current standards of the community. The restrictions placed by the community are not to be exceeded except marginally. The consensus principle is sought to be emphasized, thus putting the seal of approval on traditional conservatism.

The only advance made is in respect of viewing the work as whole for judging its merit. The judgement in the *Ulysses* case is quoted in support of the argument: "Where a book is written with honesty and seriousness of purpose", it is not to be considered as obscene. Several statements of judges in

Roth v. US. have been quoted approvingly, but those entirely represent the majority opinion. The Grove Press judgement is to be commended for its refusing to subject *Lady Chatterley's Lover* to another dose of censorship.

D4 BOMBAY HIGH COURT JUDGEMENT (1962)

In a manner of speaking, the judgement of the Bombay High Court in (1962) *Ranjit D. Udeshi* vs. *The State* is a throwback, coming as it does following the British and American judgements of 1954 and 1959 respectively. The case before the Bombay High Court concerned the importation of the book from abroad. The stage of publishing an Indian edition was to await a future (and indeterminate) date.

The Indian judges struck to the guns of the *Hicklin* test whereby a single sentence construed to be obscene was sufficient to damn a book. Logically enough, the motive for the publication was not relevant, because the attention was entirely attuned to the consequences of the act.

The consequences were logical in the circumstances. What else could be the result except "corruption of the minds and prejudice of the morals of the public". When seen in the light of subsequent developments of the last quarter of a century, the decision of the Bombay High Court seems to be incongruous in the circumstances.

The sentence was passed by the lower court on the partners of the Happy Book Stall under Section 292 of the Indian Penal Code for the sale of a "highly controversial novel" which was alleged to be obscene. The judge quotes H.D. Lawrence extensively for damning him in his own words by referring to his writings on "phyllic consciousness" or the novel being "too phallic for the gross public". Ironically his assertion that he (D.H. Lawrence) would not recommend his own prim and conservative sisters to read the novel for their peace of mind is not mentioned along with other hostile statements of similar character.

The judgement seems to have a quality of polemics with

predetermined targets. There is considerable body of literature about D.H. Lawrence to establish the contrary positions. The great novelist is not as presumptuous and simplistic as may appear on the surface.

D41 MELLORS' UNDER ATTACK

Sex has been considered as a sinful act by the medieval church. This tradition has been the norm until the Victorian times. The medieval tradition in India has been entirely different. The *joie de vivre* in sexual relationships has been expressed with the fullest abandon in the sculptural masterpieces of Khajuraho and Konark, in the works of poets like Jayadeva as well as in the whole range of *shakti* literature. The present-day middle-class morality in India is in line with the medieval Christian tradition of abhoring and damning sex. The West has abandoned the same tradition lock, stock and barrel. This situation has been a recent phenomenon. The middle-class morality however continues to reign supreme in India. Similar ethos has been reflected in the judgement of the Bombay High Court.

The same cultural tradition is reflected in the following assertion contained in the Bombay High Court judgement referred to earlier. The statement reads in full as follows: "On a perusal of all this material in the book, a man of ordinary understanding and knowing ordinary English according to the present day standards in this country, would be inclined to believe that the author advocates every woman finding a Mellors, to satisfy her sex craving and an employee or a guest justifiably indulging in sex relation under the roof of the husband. If this is so, it is clearly repugnant to public morals".[44]

It is extraordinary to draw the conclusion about advocacy of mass immorality from the contents and main theme of the novel. Mellors is by no means a debauchee. He is actually a normal human being. He is more revealing as a person representing his class. One of the major themes of *Lady Chatterley's Lover* is the class conflict in British society, as well

as the liberation of women in male–dominated society. Mellor's relationship with Connie is reflective of both these aspects, besides sexual liberation.

D5 SUPREME COURT JUDGEMENT (1965)

The ban upon the importation of *Lady Chatterley's Lover* was justified by the Bombay High Court. The venue shifted to the Supreme Court of India. (1965) *Ranjit D. Udesh* v. *The State of Maharashtra* revived the issues fought out three years ago in the court rooms of the Bombay High Court. The Supreme Court of India in its judgement supported the contention of the Bombay High Court by adopting the line of least resistance.

Obscenity was contrsted against 'public decency and morality' in terms of Section 292 of the Indian Penal Code. The assertion of the *Hicklin test* was reinforced by observation of obscentiy to be considered by itself and separately. Definition of obscenity was justified by its results.

In the conflicting situation between freedom of speech and expression on the one hand, and, 'public decency and morality' on the other, the court was of the confirmed view that the former must prevail over the latter. The court took a traditional view of obscenity in line with the consensus principle. The court thus reflected 'the conscience of the community' as represented by the common man in the street.

The judgement was logical in the situation. Hardly any public opinion had been built in the country in favour of the novel. Intellectual community barely reacted to the challenge. Censorship has hardly been a matter of conscience in the counrty. No wonder, their lordships were of the view that "in treating with sex the impugned portions viewed separately and also in the setting of the whole book passed the permissible limit judged of from our community standards and there was no social gain to the public which could be preponderate, the book must be held to satisfy the test of obscenity indicated above".[45]

Death sentence was passed on the novel by the Bombay

High Court. The book was considered within the meaning of Section 292 of the Indian Penal Code. Obscenity was thus considered a criminal offence. The sentence was all pervasive. The book was also found obscene, even taking the overall view of the situation. The Bombay High Court passed sentence on the same grounds on which the American courts exonerated the novel. The American judgement, it must be recalled, was based on the overall view of the situation. Here are two judgements delivered across the globe in reverse based on the same ground, but with varying perceptions. The early assertion about the particularized assessments based on the predilections of the judges comes to be established.

D51 BETWEEN TRADITION AND INNOVATION

Law has the innate tendency to run with the hare and hunt with the hound. Literature is always in the vanguard. The best of the literature is innovative by definition. The reverse of innovation is conservatism and tradition. Law in matters of censorship has always oscillated between sustaining the *status quo* and helping in dismantling of the establishment.

The best of the literature is usually an assault on the conscience of the community. The innovative literature attracts attention of the censors, because it not only questions the established literary values, it also touches upon the sensitive issue of social mores, practices and values. The questioning of social values touches upon the raw nerve of the community.

Maximum intolerance results when sex and religion are involved. The combination proves to be a lethal one. Censorship has been most pronounced in respect of literature touching obscenity and pornography. Obscenity has been a sensitive subject throughout the centuries. Salman Rushdie's *The Satanic Verses* has generated so much controversy because religion and obscenity have become admixed in the novel. *Lady Chatterley's Lover* has laid obscenity under assault directly and religion by implication.

Such being the situation, the courts have also found them-

selves placed on the horns of a dilemma. At times, they have gone along with tradition. On other occasions, they have been forward looking by going along with the innovative literary practice.

The four judgements about *Lady Chatterley's Lover* are a clear instance of the kind. Two judgements have voted for tradition. The other two have been innovative. It is however encouraging to note that the citadel has been under constant assault from innovations, thereby making the censorship yield ground gradually.

D6 ARCHIBALD MACLEISH

Law has in a manner of speaking kow-towed to literature. The best of legal judgements have helped to formalize innovative ideas in literature and other fields of knowledge. Social reforms have come to be institutionalized through legal sanction. Legal opinion at its best has played a progressive role. The censorship battles over *Lady Chatterley's Lover* have resulted in more relaxed and objective attitude to sexual matters.

The best of the writing on the subject is not found in the court judgements, but in the preface to the American edition of *Lady Chatterley's Lover*. The Grove edition has a preface by Archibald MacLeish, the former Librrnian of Congress, as much known as a distinguished poet and literary critic in his own right. His introduction is one of the most profound writings in defence of the novel. His thought need to be recapitulated in full. The debate on obscenity, literature and censorship has been placed in proper perspective. The subject matter is of universal character.

Only Archibald MacLeish has the necessary status to interpret D.H. Lawrence and his writing adequately. He finds a mention in the Grove Press judgement and the pronouncement of the Bombay High Court. Though he has been quoted at length in the two judgements, yet his main thesis remains to be integrated into the very body of the judgement. This task has been left out of consideration by the honourable judges. His main thesis

needs to be recapitulated for viewing the varying judgements on the novel in a perspective.

Paradoxically enough, the thesis of Archibald MacLeish finds echo in the British judgement on the novel without mentioning it. No wonder, the same remains the most perceptive in the annals of judgements in the sensitive area of obscenity. In this instance, the law plays a secondary role to literary criticism.

D61 CLASSIC OF THE TWENTIETH CENTURY

Archibald MacLeish has no hesitation in terming *Lady Chatterley's Lover* as one of the most important works of the century. For such a work to have been banned from free circulation over several decades as pornographic seems astonishing in restrospect. Unbelievable is the right word for it. D.H. Lawrence was doing no more than advocating a return to the natural life of the body and the sense.

His fault lay in calling the spade a spade. His advocacy of phallic consciousness must have shocked many out of their slumber and left them disturbed at the very roots. The logical response was hostility to his philosophy of sex.

It was the use of the words employed in natural conversation, but otherwise taboo in the literary expression, that set the Thames literally on fire. He was by no means an advocate of 'dirt for dirt's sake', a fact testified to by many distinguished literary figures and other intellectuals and Archibald MacLeish in his intimable way.

The most that can be said about D.H. Lawrence is that he was intending what "it justly may offend many". He was deliberating to shock for the intended effect. He was no less sincere in his literary expression. The charge of duality in thought and word offended him to no end.

He was aiming to resolve the dialectical situation by speaking plainly and directly about sex. He was going against the current and thus subjecting himself to punishment at the mental plane. That the book had been written truthfully, with

honesty and seriousness of purpose is no longer denied. His greatest victories have been in retrospect.

D62 SEXUALITY AND SPIRITUALITY

There has been a close relationship between sexuality and spirituality in several religions of the world. It has been certainly so in the Indian tradition. Literature has been termed as the spiritual history of mankind. Archibad MacLeish goes to the extent of saying that 'no reader of any kind could undertake to express an opinion about the literature of the time or about the spiritual history that literature expresses without making his peace in one way or another with D.H. Lawrence and with his work".[46]

There is certain element of mysticism in the writings of D.H. Lawrence. His thesis of phallic consciousness is hardly sexual in the simplest sense of the term. It is more than that. The description by a critic that D.H. Lawrence was actually attempting to go beyond what he was fond of terming as phallic consciousness is apt in the context. He must have viewed sexuality in terms of spirituality without being so direct about it.

There can be no argument about the absolute efficacy of sexual power as the cure for human illness. Surely D.H. Lawrence had never intended such an advocacy. Sex was only a means, but not the end. He was a multi-fold personality.

MacLeish has termed him pure as crystal waters of a mountainous stream. Lawrence has a purity of motivation, which is indeed the mark of distinction for a creative artiste. Above all, to Lawrence literature had the highest objective of cleansing public life.

He employed literature as polemics in pursuit of his objectives as a social reformer. It is silly to impute such a great artiste with the charge of obscenity. He can be accused of exaggerating and being simplistic. These are qualities special to an imaginative child. Purity of mind and spirit characterise him in essence. *Lady Chatterley's Lover* is a reflection of that.

Chapter 11

Aftermath of Lady Chatterley

The decision of the British courts regarding censorship of *Lady Chatterley's Lover* in 1954 has opened a Pandora's box with reverberations resounding since then. The great debate on obscenity in terms of social and literary values has been fought inside the courts of law and outside.

The British decision was a landmark decision underlying sea change in attitude towards sexuality in print. There has been a general loosening all along the line. Ramparts have been coming down all round. The chronology of events bears that out.

The decision of the American courts about the book came in 1959. It was preceded by the *Roth* case (1957), which in the process of defining the concept of obscenity and its various dimensions clarified several issues. It equally confused the situation by skirting the core issue of laying down parameters for defining the ticklish concept of obscenity.

The judicial interpretations are so numerous and varying that the vagaries of human rather than judicious mind seems to be uppermost. The dynamic situation of changing social mores adds to the confusion further. The *Roth* case has turned out to be a measuring rod in spite of its vagaries.

The next landmark judgement is that of the *Ginzburg* case. Starting its journey through the American courts of law in 1963 and ending up with the judgement of the U.S. Supreme Court in 1966, it was a split decision. It was in a way correct barometer of the split American mind. Three cases on obscenity

were decided on the same date with somewhat contradictory decisions.

The most enlightening decision on censorship was that of the Vatican in May 1966. The Church verily announced that the Roman Catholic *Index of Forbidden Books* was no longer an enforceable instrument of censorship. It was now to be considered as a purely historic document.

E1 HUMAN VALUE SYSTEM

The journey that began with the lifting of censorship over *Lady Chatterley's Lover* in 1954 finds the culmination of the process with the *Ginzburg* case (1963-66). The battle of ideas extending over twelve years was only the first stage. Its intensity has been heightened with the controversy over Salman Rushdie's *The Satanic Verses* after about a quarter century.

The dimensions are the same whether censorship has political, religious and sexual connotations. The battle lines are receding all the time. The battle has also assumed international dimensions. The censorship battles over sexuality are a part of the larger canvass of fundamental rights of human beings. The obscenity cases are thus required to be viewed in the correct perspective. The *Ginzburg* case along with judicial decisions on allied cases needs to analysed comprehensively for drawing the correct conclusion.

Last, but not the least, the battle over obscenity is not merely a legal battle. It is concerned with the larger issues of political, social and literary values, not to be viewed separately, but pieces in a mosaic constituting the human value system. Censorship battles have always been over the place of dissidence in society. Similarly in the *Ginzburg* case, the minority judicial opinions have proved to be more enlightening and thus responsive to the societal changes. Ultimately, censorship battles are indicative of the same.

E2 THREE JUDGEMENTS (1966)

The Supreme Court of the United States pronounced three judgements in obscenity cases on March 21, 1966 consecutively.

Those are known as the *Ginzburg*, *Mishkin* and *Fanny Hill* cases. The publisher Ralph Ginzburg was charged with twenty-eight counts of mailing obscene matter. The other publisher Edward Mishkin was charged with publishing and selling of more than one hundred paperbacks devoted to sadism and masochism.

The *Fanny Hill* case has a similar ring about it. The novel, sometimes known by its alternate title, *Memoirs of a Woman of Pleasure*, by English author John Cleland was published in 1749. The novel has earned a degree of notoriety in literary circles as a distinguished piece of erotica. It narrates the sexual adventures of a prostitute rather boldly.

The charge of obscenity in *Ginzburg* case did not revolve around the quality of contents of material published by Ralph Ginzburg. The obscenity was established because of "The content of the circumstances of production, sale and publicity". The publisher got caught up because of the manner in which the material was promoted by him. The definition of the court went beyond the definition of the *Roth* case.

The *Mishkin* case resulted from the sale of literature admitted to be obscene by the publishers when intended for the general reader. The selling material was considered to be "sadistic and masochistic", but strictly intended to appeal "to the [prurient] interest of perverted persons". The special interest of the material was explained as the extenuating circumstances. The material was said to pass the *Roth* test.

In both the above cases, the liberality indicated in the *Roth* test was reversed. The court decisions were a throwback, largely because the public opinion had begun to feel concerned at the Niagra of pornographic literature that seemed to flood the markets. Surprisingly, the Supreme Court voted in favour of the novel *Fanny Hill*, thus reversing the judgement, as contrasted with other two cases. *Fanny Hill*, that delightfully obscene novel, got the reprieve denied in other two cases.

E 21 GINZBURG CASE (1966)

After the *Roth* test, *Ginzburg* case has become the litmus test.

The history of the case may be briefly recapitulated. In 1963, The Justice Department charged the publisher Ralph Ginzburg with bringing out twenty-eight acts of mailing obscene literature. The District Court sentenced Ginzburg to five years and heavy fines. The judge considered each of the publications as "a blow to sense, not merely sensibility" and went on to click the argument by calling the same as "dirt for dirt's sake and dirt for money's sake."[47]

He then went on to appeal to the Supreme Court. He was backed up by respectable organizations like the American Civil Liberties Union and the Authors League of America. The court was sharply divided, with as usual Justices Black and Douglas placed on the minority bench. The majority opinion seems to have overlooked and to some extent reversed the *Roth* case. There had been a deviation from the norm by ignoring the contents of the material in question and by concentrating attention on the methods of promotion of literature.

Imagine D.H. Lawrence's *Lady Chatterley's Lover* being exonerated of the charge of obscenity as regards the actual contents of the novel, but with its publishers being hauled up for improper publicity of the book, followed by clamping of censorship over the novel. Not literary merit of the book, but extraneous considerations like advertisement, and promotion become the paramount consideration under the *Ginzburg* case. Imagine a situation where a piece of fine writing which might not be obscene in itself would become obscene because "of the content of the circumstances of production, sale and production."

Justice Dogulas has said the last word on the subject in his note of dissent: "The advertisements of our best magazines are chokefull of thighs, ankles, calves, eyes, and hair, to draw the potential buyers, attention to lotions, tires, food, liquor, clothing, autos, and even insurance policies. The sexual advertisement neither adds to nor detracts from the quality of the merchandise being offered for sale. And I do not see how it adds to or detracts one whit from the legality of the book being distributed. A book should stand on its own, irrespective

of the reasons why it was written or the wiles used in selling it. I cannot imagine any promotional effort that would make Chapters 7 and 8 of the *Song of Solomon* any the less or any more worthy of first Amendment protection than does its unostentatious inclusion in the average edition of the Bible."[48]

E 211 MAJORITY OPINION

The *Ginzburg* majority opinion needs to be stated at length due to its wide-ranging implications. It is readily admitted by the majority opinion that the publications in themselves might not be obscene, except "in the context of the circumstances of production, sale, and publicity."[49] It is the whale of an admission to make, especially when the prosecution was equally prepared to admit the same.

Having a limited big space to stand upon, the charge of obscenity had perforce to be limited to extraneous considerations of advertisement and publication, and in what the majority opinion chooses to pander to "the business of purveying textual or graphic matter openly advertised to appeal to the erotic interest of their customers".

In other words, the "leer of the sensualist" permeating the advertising proved too much for the sensitive nostrils of the prosecution and the honorable judges. The honorable judges seemed to be treading a slippery path when the book and the author were to be punished for the follies of the publishers.

The author is an agent falling beyond the province of publisher's jurisdiction, for purposes of organizing publication, distribution, sale and distribution of a book (embodying intellectual thought), to that extent he can not be culpable for the actions of the other party. The controversy over the definition of obscenity takes a turn least expected. It is like taking a 180 degree turn without caring to explain the rationale.

E 212 TITILLATION THROUGH ADVERTISEMENT

Whatever the other limitations of the *Roth* judgement, it has

delimited the area in which the subject of obscenity can be contained. The case for the prosecution is confined to the "leer of the sensualist" and "sexual imagery" with what the majority opinion delicately described as the "circumstances of presentation and dissemination of material." It is a thin ice to tread upon, but the wondering result is that the material not recognized to be obscene on the merit of the case comes to be legally defined as obscene due to extraneous considerations.

Umbrage seems to have been taken over the fact that publicity circulars mailed by publishers were salaciously disposed and thus lent themselves to "an exploitation of interests in titillation by pornography." This was considered enough to condemn the material to purgatory, "even though in other contents the material would escape such condemnation."[50]

Judging a learned treatise or literary work on the basis of offensive advertisements is perverse. Such a situation gives an handle to the critics and governmental authorities to apply standards of authoritarianism under the garb of democratic norms.

Censorship may be brought about easily in societies that are normally disposed towards fundamental rights for the individual. The *Ginzburg* decision was in a manner of speaking a throwback to medieval times. There seems to no direct connection between the crime and the punishment. It is a perfect instance of obscenity by context.

E 213 HISTORICAL PRECEDENTS

The *Ginzburg* was not merely confined merely to considering obscenity "in the context of the circumstances of production, sale, and publicity". The larger issues pertaining to obscenity were also considered. Those may be reviewed in the context of developments since the *Roth* judgement. The *Roth* opinion is still crucial in deciding the ticklish issue of obscenity. It may be recalled that the *Roth* judgment laid down the following three tests:

1. Whether the material is *utterly without redeeming social*

importance,
2. Whether to the average person, applying *national community* standards, the dominant theme of the material appeals to the *prurient interest*, and
3. Whether the material is *patently offensive*.

The *Roth* judgement was further clarified by (1962) *Manual Enterprises* v. *Day* and (1964) *Jacobellis* v. *Ohio*. While the former laid down that a work must have the quality of 1) "*patent offensiveness*" as well as by 2) "*prurient interest appeal*" to be considered obscene, the latter laid down that that obscenity must be judged by 1) "*national community standard*" and considered 2) "*utterly without social importance*". Justice Brennan added another element to the legal definition of obscenity in (1966) *Fanny Hill* case that "A book cannot be proscribed unless it is found to be *utterly without redeeming social values*". The three elements considered for the obscenity test by the majority of the court in *Ginzburg* may be listed as follows:

1. Whether the *dominant* theme of the material taken as a whole appealed to the prurient interest in sex;
2. Whether the material was *patently offensive* to *contemporary community standards*; and
3. Whether the material was "*utterly without redeeming social values*."

The above test applied not only in respect of the *Ginzburg* case, but also cemprehended the two cases, namely, *Mishkin* and *Fanny* cases, decided by the Supreme Court simultaneously on March 21, 1966.

E 3 JUSTICE BLACK'S DISSENT

Justice Black in his note of dissent has completely rebutted point-by-point the majority opinion. The subsequent developments of social values as reflected in literature have validated

the assertions of Justice Black. Time is said to be a great healer. Social attitudes to sexual matters have transformed so radically since the *Ginzburg* judgement was delivered that the traditional views of obscenity as reflected in legal judgements seem so prosaic.

As regards the first element of "the prurient interest in sex" is concerned, Justice Black was in the right; the trend of the judgement would be determined "by the judge's personality, habits, inclinations, attitudes and other individual characters".[51]

Salman Rushdie's *The Satanic Verses* would for sure be subject to censorship in an Islamic country and by jury composed of jurors of Muslim faith. It shall not find any buyers for the book being censored in countries with the tradition of rule of law. The very fact that several crucial judicial decisions including the *Ginzburg* case have been decided by narrow majorities is significant. Judges are no less human than the rest of us. Besides, the law is not static. It continues to be interpreted and re-interpreted constantly.

E 31 COMMUNITY STANDARDS

The second clause relates to contemporary community standards. Whether those standards are international, national, regional or local needs to be spelled out. What is patently offensive can be another matter of doubt. What is considered patently offensive in one social group may be normal to another social group.

The worship of phallic symbols is integral to Siva cults in Hinduism. It may be considered offensive by other social groups. Similarly sexual practices that were considered patently offensive until recently on world-wide basis are considered matter-of-fact in the contemporary society. The use of four-letter words by D.H. Lawrence, James Joyce and Henny Miller was considered so offensive that the books that are now considered classics had to be circulated surveptitiously for long.

Similar doubts need to be expressed about contemporary

community standards. Who is to arbitrate in respect of community standards? Here also obscenity is hard to define. The *Roth* judgement refers to national community standards. Recent proposal for a uniform civil code for all communities living in India was vehemently opposed by a particular religious community.

Above all, the very dynamics of social values places the possibility of establishing uniform standards in respect of sensitive issues like sexual matters in jeopardy. One has to be reconciled to the fact that in the ultimate analysis the determinant factor shall be as in respect of the clause relating to the "*prurient interest in sex*", ultimately "The personal judgement and attitudes of particular individuals and the place where the trial is held".[52] The ephermerality of community standards needs to be stressed in the present context. Hence law must imbibe a proper sense of history for a futuristic design for its very credibility.

E 32 SOCIAL VALUES

The third element has to do with social values. The very fact that there is no agreement on defining obscenity and its parameters is indicative of the uncertain situation. After centuries of coping with sexuality, the enlightenment is as elusive as before.

The element of uncertainty has been enhanced with the passage of time. Social values especially in sexual matters are increasingly becoming elusive with rapidly changing attitudes to sex. The ignorance over sexual matters is so phenomenal. It is especially true of normal human beings with enlightened attitudes towards all aspects of life, except perhaps in sexual matters.

The collective human conscious is overlaid with prejudices deeply ingrained at the very depths of the subconscious. This is no less true of jurors and judges alike. Social values in their essence are tribal in most instances. Such prejudices are bound to be reflected in the judicial pronouncements. Tribal

instinct and not enlightened attitudes determine sexual values.

Sexual matters are so near and dear to the hearts of human beings. Such being the case, the attitudes to such matters normally speaking should have been most enlightening. On the contrary, the attitudes are overlaid with prejudices. Those are naturally reflected in judicial pronouncements. It speaks highly of the judicial system and its representatives of being all too human in sexual matters. After all, to err is all too human.

What saves the situation in the ultimate analysis is the element of dissidence in the situation. Traditional social values are being subjected to battering all the time. That is as it should be. Traditional social values are being subjected to scrutiny all the time. The element of uncertainty introduced by dissidence is most welcome. Justice Black and his likes are to be commended for the same.

E 4 FANNY HILL

The element of uncertainty has been established in respect of all the three tests laid down for obscenity in the *Ginzburg* test. Defining the prurient interest in sex, contemporary community standards and social values, is, in the ultimate analysis, decided by "the judge's or juror's personality, habits, inclinations, attitudes and other individual characters."

The dilemma is best expressed by the treatment given to *Fanny Hill* by the courts of law. It was treated like a football until it landed with the highest court of law in the land, namely, the U.S. Supreme Court. It must be said to the credit of literary critics that they have been the torch bearers and led others as if by the nose.

The minority opinion in the Supreme Court has coalesced in its perspective with the literary crowd. The so-called contemporary community standards is reflection of the popular view of social values. The populist view is to be contrasted with the elitist view point as represented by the literary community. The judiciary is generally inclined to go along with the populist perspective. Judicial advances seem to take place

only when the courts have taken a futuristic view of the situation.

The courts have thus wavered with the populist and intellectual (elitist) perspectives. In this see-saw battle, which is inevitable, due to the differing world-views of individual members of judiciary, the progress has taken place. It is best described in the words of Lenin's famous dictum of "One step forward and two steps backward".

The judgement in the *Ginzburg* case was a throwback. The decision in the *Fanny Hill* case delivered on the same day was a step forward. Ironically enough, *Fanny Hill* was definitely an obscene book in terms of (1957) *Roth* vs. *United States*: "Whether to the average person applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest". This was pointedly brought out by Justice Tom C. Clerk in his dissenting opinion.

E 41 EROTIC NOVEL

The publishers of *Fanny Hill*, G.P. Putnam's Sons are a firm of standing in the world of publishing. In their submission to the court, the literary and social perspectives were highlighted in a classic statement that bears quoting *in extenso*: "[Fanny Hill] is, of course, an erotic novel. It is at the same time a work of art . . . read as a whole, it creates an effect that is primarily literary . . .

"Any legislative attempt to do away with books that may exercise sexual thoughts and desires becomes ludicrous when viewed against the realities of contemporary civilization."

"An eighteenth-century novel, no matter how much it may be devoted to the act of sex, can hardly add anything to the constant sexual prodding with which our environment assails us."[53]

Fanny Hill when published in the eighteenth century shocked several generations for its openness in sexual matters and especially its attempts at highlighting what at their best may be described as sexual deviations. The literary critics have singled

out the merits of the novel. It has been called a "work of art". Similar tributes have been paid by other literary critics with great standing in literary circles.

The majority opinion at the Supreme Court level absolved the novel of the charge of obscenity. The dissident opinion of Justice Tom C. Clark considered the novel to be definitely obscene in terms of the *Roth* judgement. It is to be noted in this connection that *Fanny Hill* "contained twenty acts of sexual intercourse, four of them in the presence of others, four acts of lesbianism, two acts of male homosexuality, two acts of flaggelation and one of female masturbation."[54]

It is no longer shocking by contemporary community standards. Fanny Hill definitely lacks the graces of Lady Chatterley but it has a charm of its own in a manner of speaking.

E 42 CONTRADICTORY JUDGEMENTS

Fanny Hill invited unusual attention in the courts of law in the United States. Its sensational character was largely responsible for the situation. *Fanny Hill* had its problems in four states. Three of the decisions went against the novel. It was declared to be obscene. The fourth decision, of New York's highest court, was otherwise. The book landed itself in the Supreme Court.

The courts deciding against the book were unusually harsh on it. It was termed as "obscene, indecent, unpure", "hard-core pornography", "patently offensive" and a "classic example of pornography."

The New York Court of Appeals, the state's highest court, viewed censorship of the book in the larger context of fundamental rights and absolved it of the charge of obscenity on that account. The book has not only to be so bad as to "be offensive to the community standards of decency", but it has to be so bad that "the constitutional freedom to print has been lost because of what the book contains".[55]

The New York Court of Appeals has sought to go much beyond the *Roth* opinion. The judgement seems to be in line

with the views of Justices Black and Douglas. The Supreme Court did not find the book obscene in terms of the *Roth* judgement. The three tests, laid down in the *Roth* test constituting prohibitable obscenity did not coalesce in the book.

There is certain oddity about the decision, in the sense when a similar case like that of *Ginzburg* was pronounced obscene simultaneously. The literature published by Ralph Ginzburg set the same standards of sexual morality. What was good enough for *Fanny Hill* should have been good enough for the Ginzburg publications. Contradiction in the decisions indicates certain amount of lack of clarity and confidence. Hypocracy shall be too strong a word to be employed in this context.

E 5 ARBITRARINESS OF LAW

The close examination of *Ginzburg*, *Mishkin* and *Fanny Hill* have not established the majority of law. It has on the other hand underlined the arbitrariness of law givers. This has been true of law givers all over the world while dealing with obscenity cases. Vatican has very wisely thrown in its towel after maintaining an *Index of Prohibited Books* over several centuries.

The split decision over the three cases by U.S. Supreme Court pronounced on the same day has shown a chink in the armour of law by attempting to cross over into the province of literary criticism. Howsoever judicious are to be the judicial officers in their pronouncements, they should not be expected to be arbiters of literary and social values. At the most they may be expected to be faithful interpretors.

The result in the *Ginzburg* and *Mishkin* cases was predictable. The majority opinion got bogged down in the interminable argumentation by referring to "contemporary community standards", "the motivation of publishers" and "the leer of the sensualist" as their points of reference. To the critics, "redeeming social value" is like defining obscenity by context, besides "Subjective analysis, the probing of people's motives,

the sampling of public taste–these are not solid foundations on which to erect the nation's laws".[56] Confusion worst confounded has been created as a result of varying interpretations.

The matters shall be faciliated by recognizing that innovations form the basis of knowledge. Deviation from the norms is the very foundation of new ideas. Law comes to be stultified when it tends to interpret in static terms. There is a dialectical relationship between tradition (static situations) and change (dynamic concepts). The interpretation of the concept of obscenity must be done in the same context.

Chapter 12

Social Censorship the Solution

F0 SEX A FACT OF LIFE

Sex is a fact of life. It has always been a subject of constant talk among human beings. The mind is also constantly absorbed by it. The whole genre of romantic literature, social and psychological relationships and intra-personal relationships are absorbed by it. The arts at their creative best have embodied it. It has always given pleasure and pain to human beings. It shall continue to be talked about whether in the strictest regimes of censorship or societies with no inhibitions in expressing thought about it. The taboos that have been attached to direct expression of sexual thought in print have not reduced the obsession with sexual matters. There has been more of sex in the suffocating atmosphere of supersession throughout centuries.

Justice Black in his dissenting note on the *Ginzburg* case has put it appropriately: "Its persuaive influence is felt throughout the world and it cannot be ignored. Like all other facts of life it can lead to difficulty and trouble and sorrow and pain. But while it may lead to abuses, and has in many instances, no words need be spoken in order for people to know that the subject is one pleasantly interwoven in all human activities and involves the very substance of the creation of life itself. It is a subject which people are bound to consider and discuss whatever laws are passed by any government to try to suppress it".[57] Justice Black has no clear solution in mind. He is however clear on one point. Censorship is not the

answer.

Justice Douglas clinches the argument in his note of dissent. He would like no restrictions to be placed on the expression of ideas–"orthordox, popular, off-beat, or repulsive". Let their be a free interplay of all kinds of ideas, whether good, bad, immoral or with a sense of morality. The interplay of ideas may take place in the market place of ideas, with the good (hopefully) driving the bad in the long run.

F1 SOCIALLY UNDESIRABLE BEHAVIOUR

That there is a close relationship between obscene literature and deviant behaviour of human beings has been a deeply grained myth. It is only an assumption. Hard evidence is difficult to come by. There is information available in contrast.

Such genres of literature may actually have come handy in curbing potentially aggressive tendencies. Aggressive tendencies in sexual behaviour may have been channelized by the reading of so-called sexually-contaminated literature. Mind may have come to neutralize tendencies to physical violence.

Wars are said to be made in the minds and happily end there in most instances. So-called erotica or obscene (pornographic) literature has come to act as a safety valve in releasing aggression. Its negative contents seem to bear positive results.

Several leading experts have objectively studied the relationship of juvenile delinquency with obscenity. No positive relationship has been found between them. Sheldon and Eleanor Gluech have listed ninety factors that might lead to or explain delinquent behaviour. Reading matter is not one of them. Books are not for beating.

Similar views have also been expressed by Justice William O'Douglas in his note of dissent in the *Roth* case:

> "If we were certain that impurity of sexual thoughts impelled to action, we would be on less dangerous ground in punishing the distribution of this sex literature. But it is by no means clear that obscene literature, as so defined, is a significant

factor in influencing substantial deviations from the community standards".[58]

Another interesting fact brought out by Justice Douglas is also to be noted. Juvenile delinquents are less likely to read books. The books certainly take care of potential delinquents by helping to release aggressive tendencies.

F2 OBSCENITY AND CHILDREN

There is some weight in the argument about protecting children from exposure to obscene literature. This shall require enactment of special legislation and enforcement of social sanctions. The children are to be placed in an entirely different department. Obscenity in general is to be treated separately.

The question of children should not be treated as a ground for total censorship. Such objections were raised during the hearings on *Fanny Hill* in New York. The objections were met fully by the presiding judge quoting Supreme Court Justice Felix Frankfurter in his court decision: "The incidence of this enactment [referring to a Michigan statute] is to reduce the adult population of Michigan to reading only what is fit for children".[59] It would be ridiculous for the adults to be enacting children for fear of their accessing mature literature. Vast corpus of human knowledge shall fall in the same category.

Legislative enactments about children generally prescribe the age limit of eighteen as the ceiling. As views about the concept of obscenity are changing at the level of adults, similar process is taking place in the world of children.

The lines of demarcation between the adults and the children are thinning. Children are sexually maturing too early. They are also exposed to sexual matters at very early age. Discussion of sex is no longer taboo in families, schools and among young people themselves. Channels of communication like television and video besides other media are another source for socialization.

In the circumstance, children may have to be categorized by

age for purposes of defining obscenity. Children are amazingly knowledgeable about sex and well informed about its intricacies. The question needs to be subjected to the fullest scrutiny with fresh mind.

F3 CENSORSHIP X-RAYED

Justice Stewart in his opinion in the *Ginzburg* case has rightly belablled censorship as an indication of a society's lack of confidence in itself. It is indeed a barometer of authoritarian tendencies in the society, combined with heavy hand of judiciary.

Censorship has become so much a way of life with all kinds of governments, whether democratic or authoritarian, sitting over judgement over published literature is taken for granted. No questions are asked as if censorship were a fundamental right invested with governmental agencies. It is indeed an intolerable situation because censorship rights are vested in individuals who may neither be competent nor qualified by training to sit over judgement over literary and scholarly matters. This is like handing over loaded gun to a child to play with; the results are indeed predictable.

Unfortunately legal controls provide sanctions to governmental agencies, without recompense to the other party. Such situation is a sad reflection on the actual functioning of democractic institutions. Normally the burden of proof rests not with the person or institution charged. It is prosecution and not the defence that is required to establish the truth of the charge. The position is completely reversed in the instance of censorship. The author of the material charged with obscenity is immediately placed in the dock. His or her position is pitiable because the person finds himself or herself in the dock in the public eye.

He is also the culprit in his own very eyes. The one censored dies thousand deaths before the trial begins. When exonerated, such a person is not duly compensated except in his own eyes. The state should be made to pay for such a sacrilege.

F4 FUTILITY OF LEGAL CONTROLS

Admittedly pornography has assumed serious dimensions in recent years. This has happened simultaneously with relaxation of the definition of obscenity by courts of law. There is also a greater acceptability of erotic literature in the public mind. Whether there is any connection between the foregoing propositions can be debated endlessly.

The sense of discrimination between what constitutes pornographic literature or not is a healthy social phenomenon, but it has necessarily no connection with freer and wider circulation of pornographic literature. This would have taken place in any case. The same has to do with the degree of voluntary social controls exercised by any social system. This is a matter concerning moral education and its practical effects.

The legal controls are another cup of tea. As Justice Douglas has pointed out in his dissent in the *Roth* case: "If experience in this field teaches anything, it is that censorship of obscenity has almost always been both irrational and indiscriminate".[80] There are dangers lurking in applying legal controls stringently.

Censorship of pornography may be employed as a convenient tool of suppressing all unpopular ideas. It has been established earlier that all innovative ideas are to be attributed to dissidence. The writings of D.H. Lawrence for instance were both innovative and invocative of dissidence. Legal controls tend to reinforce tradition and inhibit innovation, going as it does against the established order.

There are also several instances when the law has tended to be an instrument of progress. There is however no law that can establish its progressive character definitely. That it has inhibitive potentialities has been established times without number. It is not necessary to go any farther to establish the thesis. The legal controls exercised over obscenity cases have brought about confusion and uncertainties galore by conflicting definitions, opinions and pronouncements.

F5 BOOK BURNING

Censorship of books raises several fundamental questions involving fundamental rights of individuals in democractic societies. Those who exercise censorship are to be compared to book burners. They are not required to argue and persuade. For them the censorship of books comes as a matter of right. The prerogative to ban (or burn) books comes as a matter of right. No explanations are called for justifying censorship. No apologies are in order for any errors in judgement.

The banning of import of India of Salman Rushdie's *The Satanic Verses* is a case in point. Of all the Finance Ministry (Government of India) issued the preemptory order censoring the book without practically anybody in India having read it. The book burners in this instance did not have the heart to ban the book without a twinge of conscience. The merit of the book was conceded but ungraciously a censorship order was levied at the same time. No one in India was consulted about the merits of the book. At least the formality of consulting literary critics should have been carried out. The ban was ordered by faceless authorities.

While there has been all round relaxation in respect of other fundamental rights for individuals throughout the centuries, the freedom to read has received buffetting both in democractic and totalitarian systems in recent times. Books continue to be the most dangerous opponents of the established orders. Years ago 'the end of ideology' was declared from the housetops. It has proved to be wrong. Ideology continues as the most potent force of all times. Books are repositories of ideas and ideologies personify the same. No wonder, while in all other instances, burden of proof rests with the prosecution under any rule of law, the censorship of books makes an exception. The burden of proof of establishing innocence rests with the affected. No doubt censorship is turning out to be a convenient tool of oppression.

F6 PEOPLE THE ARBITER

Justice Frankfurter in (1959) *Smith v. State of California* has made a classic statement that needs to be quoted in full: " . . . Can it be doubted that there is a great difference in what is deemed to be obscene in 1959 compared with what was deemed obscene in 1859. The difference derives from a shift in community feeling regarding what is to be deemed pruriant or not by reasons of the effects attributable to this or that particular writing. Changes in the intellectual and moral climate of society, in part doubtless due to the views and findings of specialists, affording shifting foundations for the attribution . . . Unless we disbelieve that the literary, psychological or moral standards of a community can be made fruitful and illuminating subjects of inquiry by those who gave their life to such inquiries, it was violative of 'due process', to exclude the constitutionally relevant evidence preferred in this case".[61]

Justice Frankfurter is graceful to throw the ball from the court of book burners and judicial arbiters to where it belongs. The real arbiters are the people who constitute the reading people. Intellectuals form the vanguard. The whole controversy over obscene literature should have the province of those concerned with determining "the literary, psychological or moral standards of the community". The dissidents among the intellectual community constitute the further vanguard.

There are concentric circles within each other. The people, judiciary, intellectuals and the dissidents among them constitute the whole universe.

The state has a minimal role of regulating rather than directing the drama. Censorship through legal controls has hardly any place in the scheme of things. Censorship has to be self-regulatory and self-imposed. Social censorship ought to displace official censorship. The battle against obscenity and pornography ought to be fought at the moral plane.

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Section III

Chapter 13

History of Censorship in India

A BACKGROUND

There has been no known instance of "book burning" in India as it took place in the Nazi Germany nearly four decades ago. There are no comprehensive sets of laws of censorship in India to highlight the issue. There are also no detailed studies on the subject in this country. The violation of fundamental rights has thus been so subtle that it has gone unnoticed. We cannot, however, wish away the situation. There has been in actual practice persistent violations of the fundamental right of "freedom to read" in this country after India achieved independence in 1947. The reason why there has been no debate can be traced to our traditions. We are basically a conservative people, prepared to acquiesce in everything that does not seem to jeopardise our personal interests. Intellectuals in India do not stir themselves up except in instances where their material interests like salary scales are effected. It is no wonder that the instances of censorship of books in this country have gone unnoticed. It is high time that the issue of censorship of books in India is comprehensively dealt with, so that this country is enabled to fall in line with other progressive countries of the world where the "freedom to read" is considered sacro-sanct and the censorship of books is so marginal that it is imperceptible for all practical purposes.

LADY CHATTERLEY'S LOVER

The most well-known instance in which the law upheld the right of public authorities to ban the circulation of a book

took place in 1965 when the Supreme Court of India upheld the conviction of a bookseller in Bombay who had sold the unexpurgated edition of *Lady Chatterley's Lover*. The decision of the Supreme Court of India is to be contrasted with that of the British and American Courts who simultaneously decided otherwise about the book. These diametrically opposite decisions were taken in three countries. Thus famous dictum that law is an ass finds its justification in the instance given above. The irreverence implied in the quotation is to be pardoned, but in no way it invalidates the dictum.

On going through the judgement pronounced by the Supreme Court of India, it makes a revealing reading. Basically, the decision was based on the famous *Hicklin Test* of obscenity laid down by Cockburn, C.J. The *Hicklin Test*, as it is well known to lawyers, is based on the test whether the book has the tendency "to deprave and corrupt those whose minds are open to immoral influences." It is indeed remarkable that a test laid down in the Victorian era has stood its validity for a century in India notwithstanding the fact that it is no longer considered so in the country of its origin. There is, perhaps, some rationale in the Supreme Court taking so dim a view of the scope of obscenity. The contrast lies in different moral yardsticks being applied in three contrasting societies like that of India, England and the United States. While the moral values in India are still of the Victorian age, the English society has been passing through the so-called Age of Queen Elizabeth-II. This also proves innate conservative attitude of Indian judges truly reflecting the ethos of the majority of people living in this country. There being only a veneer of progressivism underlying the sea of conservatism in this country, it was but natural for the judges in the circumstances to follow the line of least resistance. Here is an instance of a tail wagging the dog.

A decade is a long time in the fast changing world of today. The moral attitudes that were abhorent in 1964 have found acceptability in the year 1973 due to the proven ineffectiveness of obscene publications or representations to shock anybody any more. The experimentation in films abroad and more

especially in theatre in India has been so bold as to leave behind the *Hicklin Test*. There is no doubt that if such a case were to come before the Courts in India today, the decision in all probability will be for allowing circulation of books like *Lady Chatterley's Lover*. Ironically, the judgement against the book has done more for the book than was possible through the efforts of its publishers, distributors, booksellers and the press combined. The underground circulation of this book was very wide in this country in spite of the judgement of the Court. If the authorities had not taken note of the book and allowed normal circulation to it, the number of copies that could have been sold in this country would not have been so large. Thus, in the normal circumstances, it is wiser to ignore the circulation of obscene or pornographic books rather than attempting to ban their circulation. Forbidden fruits are always sweet. In fact, there is no need for any intervention of the law in such matters. Thus, apart from moral and ethical standards which keep changing fast and cannot be defined with any certitude, no books need to be banned on practical grounds alone.

B ARTICLE 19

There is no specific mention of the "freedom to read" in the chapter of Fundamental Rights in the Constitution of India. In actual practice, however, Article 19 of the Constitution has been used as the main plank in this connection (Appendix-I). Clauses 1 and 2 of the said Article have to do with the right to freedom of speech and expression. While Clause 1 grants fundamental rights to all citizens, Clause 2 takes away the right substantially by making several exemptions to the rule. As a critic has put it: "The Constitution first guarantees a right then permits the State as an exception, to make laws for some specified purposes, then imposes further instructions on the permissible subjects, as exception to the exceptions, in so far as all exceptions are required to be reasonable."[1] The clause 2

[1]Minattur, Joseph: *Freedom of the Press in India, Constitutional provisions and their application*, Martinus Nijhoff, The Hague, 1961, 1.

has a penumbral character because it places restriction on the exercise of the "right to freedom and speech of expression" on grounds of (i) public order, (ii) morality, (iii) decency, (iv) friendly relation with foreign states and (v) in the interest of the security of the State. When interpreted generously, Clause 2 probably covers all conceivable situations under the sun under which books can be banned in this country. They can be confiscated when imported from abroad and restrictions can be placed on the circulation of books published in this country. This particular law does not take care of the situation that may arise internally, it also extends its ambit to foreign relations of this country. In fact, Clause 2 goes much further by unilterally taking into its ambit the alleged sensibilities of other countries on the ground that it may affect friendly relations of this country with foreign countries. The right to restrict freedom of circulation of books is thus extended not only to grounds of criticism of internal developments but also the same takes care of comments on situation in foreign countries. Since it is difficult to define area comprehended by public morality and friendly relations with other countries a wide rope is thus given to the authorities to interpret the clauses suited to their own purpose.

One example will suffice. A publication that makes so-called unfriendly comments about the Government of another country with which the ruling party of this country may have friendly relations, is not likely to be construed in the same manner by opposition groups. The situation in a democractic country is such that it is always possible for the opposition to take over power from the ruling party. What was construed as destructive criticism today may take the character of constructive criticism tomorrow. Similarly, the same thing can be said with regard to public morality. What is considered abnormal or immoral conduct may come to be accepted as a part of life. This is bound to happen too often in the situation of today. The experience in travelling backwards can be extremely enlightening. There are several instances of controversial religious books published in this country proscribed by the

authorities because these tended to injure the susceptibilities of other religious communities in India. Now with the controversy having passed into history, such works have come to be accepted and no voices are raised in opposition to them. Time is thus a great healer. The same can perhaps be said about the censorship of any book in India. More fuss is thus made by censoring a book than allowing its normal circulation. The similar situation is coming to pass regarding Salman Rushdee's *The Satantic Verses*.

The most interesting exemptions in legislation have been made in respect of religious works. It is believed that with the passage of time the same depictions and representations have very little deleterious effect on the minds of the readers. The so-called obscenity in religious books comes to be accepted in the normal course and very few readers construe the meaning in its original literal sense. Moreoever, rationale can always be adduced for such representations in religious works. The art of philosophising has been carried to such an extreme in this country that the obvious does not stand for what it depicted originally. Apart from religious reverence, confusion in the mind is enhanced through so-called philosophising. In any case, it is inconceivable for any one to delete the 'pornographic' portions from religious works anywhere in the world. The instances of the *Bible* and the *Puranas* can be quoted in support of this contention. It is also to be recognized that there is some aesthetic value in many so-called pornographic descriptions in religious works. There is, for instance, nothing to beat the *Solomon's Songs* to be found in the *Old Testament*. There are similarly some very powerful passages in *Puranas* which can hold attention of any rational human being.

The logic gets a sound beating when such an exemption is provided for religious works and not in case of contemporary literature, some of which may come to have a classical character in future. Who is, however, to judge as to what seems very mundane today will come to have a classical flavour? Discriminations by the present generation may not find their justification in future. A certain amount of ethical consideration

is also involved in this matter. How come that the present generation sits over the judgement of what the future generation should read? Time and again what has been rejected by one generation has been accepted by another one. The framers of laws about the banning of books in this country should come to have some humility and recognize that their decisions may be reversible.

C BANNED BOOKS

It may be appropriate at this stage to list a number of titles which have been affected by this craze for banning publications. The instances that we give are mostly those of imported books. There must, however, be a large number of instances of books published in this country which have been banned from time to time by the authorities. Since no centralised record is maintained publicly of such publications, it is difficult to say with certitude the exact number of such books as have been affected after independence. The banned books are usually listed in the Central Government and State Gazettes. It would involve enormous effort on the part of a large number of researchers to compile such a list. The effort, in fact, may take several years to do the job. We shall, thus, confine ourselves by giving a few illustrations.

The much talked about category is that of obscene books. *Lady Chatterley's Lover* is the most famous instance because the novel became an international celebrity at one time. The other instance is that of *Kama Kala* by Mulk Raj Anand. The book by Anand contained photographs from the temples of Konark and Khajuraho. What appealed to the devotees visiting temples was not acceptable to the authorities when depicted in a publication by a well-respected literary author of India. The other category has to do with books that are said to injure religious susceptibilities. In this category are two famous authors, namely Aubrey Menen and Arthur Koesteler whose books *Rama Retold* and *The Lotus and the Robot* respectively came under severe attack from critics in newspapers and

periodical publications. It is, however, to be noted that several reviewers took favourable note of at least of the book by Koesteler. Another category has to do with books which were considered unsympathetic to India. In this group illustrious authors like V.S. Naipaul and Ronald Segal (*Area of Darkness* and *Crisis in India* respectively) are involved. It is interesting to note that the book by Segal was widely noticed outside India and it came to be accepted as a standard book of reference on modern India. Compared to the controversial book by Selig Harrison forecasting doom for this country, the book by Segal was fairly mild mannered. The fact, however, remains that Segal received the axe, but Harrison escaped it, besides the free publicity acceded to him through notice at the highest level. The other two categories have to do with foreign relations of this country. One category has to do with friendly relations with other countries and the other concerned with books that are said to question the integrity of this country. *Moscow's hand in India* by Peter Seger was considered anti-Soviet and hence banned in this country. In other category fall such publications as have to do with the frontiers of this country. The two well-known instances are *McMahon Line* and *The Atlas of the Times*. It is to be noted that publication containing maps have invariably been banned when those do not show Kashmir as a part of India and whenever the McMahon Line is not accepted in drawing up the Northern frontiers of the country.

C1 IMPORTS FROM CHINA

These are stray instances of censorship, considering the fact that thousands of books are imported and published in this country. The censorship of books is, thus, rather mild mannered. The blanket ban, however, applies with regard to publications from China. This ban came into effect after 1962 War with China and it has been lifted recently. It is today not possible to import any book or periodical publication from China either in English, Chinese or other languages of the world. The

enforcement of this measure was so effective that hardly any Chinese publications trickle to the libraries in this country. Only one or two libraries have been privileged enough to have been exempted from this ban. Otherwise, the Chinese atudies in this country were a vast barren field due to this ban. *Peking Review*, for instance the most authoritative publication on developments in China, could not be obtained in this country. The fact of the matter is that this ban remained in force due to sheer inertia, which has in practice done considerable amount of damage to our scholarship on China. Most of the scholars in India were blissfully ignorant of the real Chinese intentions because original source materials from China were not available to them. The ban had at one time been extended to the import of publications from Taiwan, Vietnam and North Korea. It is, however, not known with any certainty whether the ban is still being applied to the above-mentioned three countries besides China.

D LEGISLATION

Since there is no comprehensive legislation on the subject, recourse is taken to the Indian Penal Code and other acts. The situation is thus very much confused. The enforcement of the legislation is in the hands of the executive who are inclined to treat books like any other commodity. Whether to ban or not a book, imported or published in India, thus, becomes the province of persons who may not be, academically speaking, very sound. This can lead to very piquant situations. The cover of the book, photographic representation or the very text may be deciding factor in such cases. The possibility of misunderstanding the text of a book by persons who are not deeply grounded and possibly do not have much time at disposal can result in comical situations. Imagine, a Customs Officer or an official in the Home Ministry glancing hurriedly through a book and then deciding one way or the other. Books are the most intricate commodity to be handled by any standards. Situation can be worse because of persons in

positions who have neither the aptitude nor the inclination, apart from the necessary background, are called upon to decide on behalf of the academic community. Such matters are best left to the judgement and the self-discipline of the academic community. Law and intellect do not mix together very well.

While it is true that there is no comprehensive legislation on the subject, the legislation in force is fairly comprehensive enough to cover most types of censorship that can be enforced in a democratic society. The legislation came into being in driblets but in course of time it has come to have a pattern. The most frequent resort is taken to sections 292 and 293 of the Indian Penal Code (Appendix-II). Section 292 was inserted into the Code by the Obscene Publications Act, 1925 for the purpose of giving effect to the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, signed in Geneva in 1925. It prohibits the distribution and circulation of obscene literature. Section 293 provides for enhanced punishment "that is, imprisonment for a term which may extend to six months", in cases where these obscene objects offered, sold, delivered or distributed are to persons under the age of 20 years. Section 293 of the Indian Penal Code was further supplemented by the Young Persons (Harmful Publications) Act of 1955 (Appendix-III). This particular act has to do with the literature portraying the commision of offences and acts of violence and cruelty. The necessity for the latest legislation concerning young persons is obvious, due to the Niagara of literature on violence that is being published all over the world. The aforesaid legislation has been supplemented by the Sea Customs Act as modified in 1955. Section 18 of the same Act prohibits the import of any obscene literature being brought into India. Section 19(a) of the same Act empowers the Central Government to forefeit such material. As if this was not enough, the Post Office Act of 1958 prohibits the transmission of obscene material by post to any place within or outside the country (Appendix-IV). Finally there is the Obscene Publications Act of 1959 which

updates the legislation so far (Appendix-V). This Act was evidently brought into force because of the changing concept of obscenity in the world on the one hand and to forestall the flood of literature that was coming into the market. This particular piece of legislation also sought to define an obscene object. Such objects as were to have the effect of tending to deprave and corrupt persons were defined as obscene under the terms of this Act. It is, thus, clear that most of the legislation was concerned with taking care of obscene literature published in this country, imported from abroad and exported to other countries, the last category being the least important in the present circumstances.

Apart from obscenity, the other obsession of the authorities has been with placing restrictions mainly over research scholars from having free access to official documents. Either the justification was concerned with security of the State or natural hesitation of these bureaucrats to prevent the public from knowing their doings. The Indian Official Secrets Act of 1923 still exists like an eternal rock (Appendix-VI). This particular piece of legislation is very conservative because it is based on the similar British Act which has subsequently been updated. This obsecssion with official secrecy has been increased with the War with China in 1962 and subsequent two wars with Pakistan.

The brief review of the legislation should place the existing situation in a proper perspective. It should also enable persons concerned with the issues of fundamental rights to fight for the reform of the existing legislation. Furthermore, it should be possible to bring about comprehensive legislation on the subject after a proper debate has taken place in the country.

E PUBLIC DEBATE

The first question to decide is whether there should be any censorship of books in this country. Such a question was not difficult to decide during the Victorian times because the Victorian ethics was very well defined and accepted universally.

This is not the situation today. There ought to be debate in this country by academics whether censorship of books should be accepted on principles in this country. Only after this issue has been resolved that we can debate further the parameters of book censorship in India. A certain amount of restraint and prohibitions are necessary in life. It is to be seen whether such discipline needs to be exercised in this country in respect of book censorship. It is very difficult to be categorical at this stage because practically nobody has bothered to raise the fundamental issue at all. In the absence of a debate, barring an exception or two, the issue has been viewed purely as an administrative measure. The absence of the debate is to be realised from the fact that the academics have been least bothered about the ban on import of research materials from China. It may be mentioned in this connection that several Universities in this country provide facilities for research and training in Chinese studies. The wonder of wonders is that all these institutions which claim to study China have managed to study the neighbouring country without feeling any lack of appropriate raw material in the form of authentic Chinese source materials. The ban, instead of harming the interest of so-called enemy country, has, in fact, harmed the interests of this country. It is incumbent on all knowledgeable persons including research scholars that they are fully informed of the intention of the Chinese in their own seasoned words. There can be no doubt that the Government of India in its wisdom would have removed the ban on the import of publications from China earlier, provided its irrationality had been brought to the attention of the appropriate authorities by the academics of this country. The trouble is thus with the academics and not the authorities. This little instance will suffice to prove our contention that the scholars are least bothered with such vital issues.

F MULTIPLE AUTHORITIES

Another instance of such indifference is to be had about the

operations of Indian Official Secrets Act. Unlike in the United States, the Act in this country is patterned on the British Official Secrets Acts of 1911 and 1920. The British legislation was undoubtedly very restrictive in its operations but the British authorities have suitably modified the Act, with the Indian counterpart remaining as restrictive as before. The major result of this policy, is the denial of access to a significant portion of Indian archives to the Indian scholars. The British and Americans, for instance, have liberalised their rules with regard to consultation of the archival materials. The Government of India should be persuaded to be as liberal as American and British Governments. The restrictions especially with regard to the archives pertaining to the frontiers of India have a draconian character. There is a strong case for modifying the policy especially because most of the archives relating to our frontiers are available either in original or in copies in the British Archives. The purpose with which this prohibition came into effect becomes meaningless for all practical purposes. The Indian and foreign scholars have thus to go to London to see these records for themselves. It would certainly be reasonable for the Indian scholars to expect to have an access to similar records in New Delhi. In any case there will be many more scholars in India coming forward to work on the concerned material if they are sure of access in future. Freer access is surely the best way of building up a fairly body of Indian scholarship as the frontiers of India.

Since there is no single focus in respect of legislation in force towards censorship of books in India, attack on the very institutions by its opponents becomes virtually impossible. The authorities can take resort to a variety of means to achieve their purpose. Since there are multiple authorities enforcing the ban on books in a variety of ways, no single authority can be questioned. In fact, when a book disappears from the market most people affected by the ban may not even be aware of the situation. There is also no common list for the country which can be had for making a total assessment of the prohibitions in force. The compilation of a list of

banned books in this country and the reasons thereof can be a challenging subject for a doctoral dissertation. It is only when this information is available that a debate can take place. The present situation is the most convenient from the point of the authorities because their actions can hardly be questioned. This state of affairs combined with general lack of will to fight for civil liberties in this country doubly ensures that it is no province of anybody to disturb sleeping dogs. It will be, thus, necessary to break out of this vicious circle; beginning has to be made by someone at some place and some point of time.

G CENSORSHIP IN ACTION

The censorship of books may be too strong a phrase in its application to the situation in India. For one thing, there is no single piece of legislation defining the scope of restriction over publication, distribution, circulation and the sale of books. The legislation in existence has come about through accident rather than design. It has evolved over a period of time. Looked in an historical perspective, the legislation has come about through the exigencies of moment. Since the legislation has evolved, it has less draconian character than happens to be the case in many other countries of the world. The other subjective feature of the situation in India is that the enforcement authorities have been very much lax, which happens to be the local policemen on the one side and the highest officials in the Home Ministry of the Government of India on the other. There has, thus, been no consistent enforcement of the laws. The censorship of books is thus less drastic because it has been enforced by the authorities at various levels. The third feature that distinguishes the situation in India is the non-existence of any Central Board of Censorship of Books. Similar Censorship Boards are in existence with regard to films but no parallel organisation has been thought of yet for the purpose of censoring books. There are both advantages and disadvantages in such a situation. Information is totally lacking because action is enforced at varying levels in the country. If the censorship were to emanate from one authority,

it should have been far easier to fight it out. The advantage of decentralised authority is that restrictive action by a local authority on one area may not make any impact on other parts of the country. A book whose sale has been banned in one state can continue to circulate freely in other parts of the country. Since there is considerable laxity in enforcing such bans, the censored material can travel back to the areas where censorship is in force through mail and from hand-to-hand circulation. The ban or censorship of a particular item can thus be nullified in actual practice. The censorship, thus becomes totally ineffective for all practical purposes. Another factor that helps in nullifying the restriction is the general inefficiency from which enforcing authorities suffer in this country. Thank God, there is yet no practice of searching of houses and offices by the police. Several hundred copies of censorsed books like *Lady Chatterley's Lover* and *The Satanic Verses* may be accessed in public libraries, personal collections and bookshops. It is, thus, possible to violate the laws in this country without receiving much punishment for such violation.

The lack of centralisation of legislation and laziness on the part of the authorities are only negative virtues. Those cannot compensate for positive action that must characterise a healthy system. It is, thus, necessary to be very clear on the issue. Shall we have censorship in this country or not? If we have a limited censorship, how far should the authorities go? What is the element of moral authority in these matters? How far the situation in other countries can be a model for us? How far there is a need for total review? Who should undertake such a review? The answers to these questions hold the key.

H FREEDOM TO READ

There used to be a very active Civil Liberties Union during the British times. A number of battles were to its credit. It is sad, indeed, that such an organization has been wound up in independent India. The People's Union of Civil Liberties (PUCL) active on other fronts is yet to take up the issue of censorship of books. The problems of fundamental rights have

now a different character, but their essence remains the same. There is all the more reason that such organizations should come into existence to take up various issues relating to fundamental rights all over the country. There are several countries especially the United States where professional organisations of librarians have taken up cudgels against censorship of books in all forms. The American Library Association fought a number of valiant battles during the McCarthy era to reaffirm the Freedom of Librarians to select books for their libraries which are controversial and are not acceptable to the authorities of the day. The American Library Association has asserted in no uncertain terms in a statement prepared by the Westchester Conference of the American Library Association and the American Book Publishers' Council on May 2, 1953 in an historic document (Appendix-VII). The document affirms the "freedom to read" because what people read is deeply important; "that idea can be dangerous, but that the suppression of idea is fatal to a democratic society." Professional organizations of Indian librarians need to take up cudgels on behalf of the "freedom to read." This is one of the most precious fundamental rights that needs to be cherished in absolute terms.

The example of a country like Denmark is before us. It is today the freest country in the world, as regards censorship of books is concerned. It has been reported by many observers that the Danish people have now begun to feel bored with sex because too much of it is available for the mere asking. The example of Denmark may be too radical for a conservative society like ours. It may not be appropriate to take up an extreme situation which is contrary to our traditions. The via media needs to be found out avoiding both the extreme positions of status quo and total change. This cannot be brought about only through legislation. A debate needs to take place in the country. The possibility of setting up a commission to review the present situation and advise regarding steps for future needs to be considered immediately.

APPENDICES

APPENDIX I

Article 19 of the Constitution of India:

"19(1) All the citizens shall have the right

(a) to freedom of speech and expression . . ."

(2) "Nothing in subclause (a) of clause (1) shall effect the operation of any existing law, or prevent the State from making any law, in so far as such law implies reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

APPENDIX II

Sections 292 and 293 of the Indian Penal Code:

Section 292:

"Whoever

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire,

distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in, or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that any person engage or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception:

This section does not extend to any book, pamphlet, writing, drawing or painting kept or used *bona fide* for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose."

Section 293:

Provides for enhanced punishment (that is, imprisonment for a term which may extend to six months), in cases where the term which may extend to six months) in case where the obscene objects offered, sold, delivered or distributed are to persons under the age of twenty years.

APPENDIX III

The Young Persons (Harmful Publications) Act, 1956

"Any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly (i) the commission of offences, (ii) acts of violence and cruelty or (iii) incidents of a repulsive or horrible nature, in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts or cruelty or in any other manner whatsoever."

And a young person is defined as a person under the age of twenty years.

APPENDIX IV

Section 20 of the Post Office Act, 1958

"No person shall send by post

(a) any indecent or obscene printing, painting, photograph, lithograph engraving, book or card, or any other indecent or obscene article, or

(b) any postal article having thereon or on the cover thereof any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character."

APPENDIX V

The Obscene Publications Act (1959)

(*Excerpts*)

"For the purposes of this Act, an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items, is, if

taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it."

APPENDIX VI

The Indian Official Secrets Acts 1923

"If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract.

(a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain, it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return of disposal thereof; or

(d) fails to take responsible care of, or so conducts himself as to endanger the safety of, the sketch plan, model, article, note, document, secret official code, password or information, he shall be guilty of an offence under this section".

APPENDIX VII

The Freedom to Read

A statement prepared by the Westchester Conference of the American Library Association and the American Book Publishers' Council, May 2, 1953.

The freedom to read is essential to our democracy. It is under attack. Private groups and public authorities in various parts of the country are working to remove books from sale, to censor text books, to label "controversial" books, to distribute lists of "objectionable" books or authors, and to purge libraries. These actions apparently rise from a view that our national tradition of free expression is no longer valid. We, as citizens devoted to the use of books and as librarians and publishers responsible for disseminating them, wish to assert the public interest in the preservation of the freedom to read.

We are deeply concerned about these attempts at suppression. Most such attempts rest on the denial of the fundamental premise of democracy; that the ordinary citizen, by exercising his critical judgement, will accept the good and reject the bad. The censors, public and private, assume that they should determine what is good and what is bad for their fellow-citizens.

We trust Americans to recognize propaganda, and to reject obscenity. We do not believe they need the help of censors to assist them in this task. We do not believe they are prepared to sacrifice their heritage of a free press in order to be "protected" against what others think may be bad for them. We believe they still favour free enterprise in ideas and expression. We are aware, of course, that books are not alone

in being subjected to efforts at suppression. We are aware that these efforts are related to larger pattern of pressures being brought against education, the press, films, radio and television. The problem is not only one of actual censorship. The shadow of fear cast by these pressures leads, we suspect, to an even larger voluntary curtailment of expression by those who seek to avoid controversy.

Such pressure towards conformity is perhpas natural to a time of uneasy change and pervading fear. Especially when so many of our apprehensions are directed against an ideology, the expression of a dissident idea becomes a thing feared in itself, and we tend to move against it as against a hostile deed, with suppression.

And yet suppression is never more dangerous than in such a time of social tension. Freedom has given the United States the elasticity to endure strain. Freedom keeps open the path of novel and creative solutions, and enables change to come by choice. Every silencing heresy, every enforcement of an orthodoxy, diminishes the toughness and resilience of our society and leave it the less able to deal with stress.

Now as always in our history, books are among our greatest instruments of freedom. They are almost the only means for making generally available ideas or manners of expression that command only a small audience. They are the natural medium for the new idea and the untied voice for which come the original contributions to social growth. They are essential to the extended discussion which serious thought requires. and to the accumulation of knowledge and ideas into organized collection.

We believe that free communication is essential to the preservation of a free society and a creative culture. We believe that these pressures towards conformity present the danger of limiting the range and variety of inquiry and expression on which our democracy and our culture depend. We believe that every American community must jealously guard the freedom to publish and to circulate, in order to preserve its own freedom to read by making it possible for the reader to

choose freely from a variety of offerings.

The freedom to read is guaranteed by the Constitution. Those with faith in free men will stand firm on these constitutional guarantees of essential rights and will exercise the responsibilities that accompany these rights.

We therefore affirm these propositions

1. It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those which are unorthodox or unpopular with the majority.

Creative thought is by definition new, and what is new is different. The bearer of every new thought is a rebel until his idea is refined and tested. Totalitarian systems attempt maintain themselves in power by the ruthless suppression of any concept which challenges the established orthodoxy. The power of a democratic system to adapt to change is vastly strengthened by the freedom of its citizens to choose widely from among conflicting opinions offered freely to them. To stifle every nonconformist idea at birth would mark the end of the democratic process. Furthermore, only through the constant activity of weighing and selecting can the democratic mind attain the strength demanded by times like these. We need to know not only what we believe but why we believe it.

2. Publishers and librarians do not need to endorse every idea or presentation contained in the books they make available. It would conflict with the public interest for them to establish their own political, moral or aesthetic views as the sole standard for determining what books should be published or circulated.

Publishers and librarians serve the educational process by helping to make available knowledge and ideas required for the growth of the mind and the increase of learning. They do not foster education by imposing as monitors the patterns of their own thought. The people should have the freedom to

read and consider a broader range of ideas than those that may be held by any single librarian or publisher or government or church. It is wrong that what one man can read should be confined to what another thinks proper.

3. It is contrary to the public interest for publishers or librarians to determine the acceptability of a book solely on the basis of the personal history or political affiliations of the author.

A book should be judged as a book. No art or literature can flonrish if it is to be measured by the political views or private lives of its creators. No society of free men can floursh which draws up lists of writers to whom it will not listen, whatever they may have to say.

4. The present laws dealing with obscenity should be vigorously enforced. Beyond that, there is no place in our society for extra-level efforts to coerce the taste of others, to confine adults to the reading matter deemed suitable for adolescents, or to inhibit the efforts of writers to achieve artistic expression.

To some, much of modern literature is shocking. But is not much of life it self shocking? We cut off literature at the source if we prevent serious artists from dealing with the stuff of life. Parents and teachers have a responsibility to prepare the young to meet the diversity of experience in life to which they will be exposed, as they have a responsibility to help them learn, think critically for themselves. These are affirmative responsibilities, not to be discharged simply by preventing them from reading works for which they are not yet prepared. In these matters taste differs, and taste cannot be legislated; nor can machinery be devised which will suit the demands of one group without limiting the freedom of others. We deplore the catering to the immature, the retarded or the maladjusted taste. But those concerned with freedom have the responsibility of seeing to it that each individual book or publication,

whatever its contents, price or method of distribution, is dealt with in accordance with due process of law.

5. It is not in the public interest to force a reader to accept with any book the pre-judgement of a label characterizing the book or author as subversive or dangerous.

The idea of labelling presupposes the existence of individuals or group with wisdom to determine by authority what is good or bad for the citizen. It presupposes that each individual must be directed in making up his mind about the ideas he examines. But Americans do not need others to do their thinking for them.

6. It is the responsibility of publishers and librarians as guardians of the people's freedom to read, to contest encroachment upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large.

It is inevitable in the give and take of the democratic process that the political, the moral, or the aesthetic concepts of an individual or group will occasionally collide with those of another individual or group. In a free society each individual is free to determine for himself what he wishes to read, and each group is free to determine what it will recommend to its freely associated members. But no group has the right to take the law into its own hands, and to impose its own concept of politics or morality upon other members of a democratic society. Freedom is not freedom if it is accorded only to the accepted and the inoffensive.

7. It is the responsibility of publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality of thought and expression. By the exercise of this affirmative responsibility bookmen can demonstrate that the answer to a bad book is a good one, the answer to a bad idea is a good one.

The freedom to read is of little consequence when expended on the trivial; it is frustrated when the reader cannot obtain matter fit for his purpose. What is needed is not only the absence of restraint, but the positive provision of opportunity for the people to read the best that had been thought and said. Books are major channel by which the intellectual inheritance is handed down and the principal means of the testing and growth. The defence of their freedom and integrity, and the enlargement of their service to society, requires all of the bookmen the utmost of their faculties, and deserves all citizens the fullest of their support.

We state these propositions neither lightly nor as easy generalizations. We here stake out a lofty claim for the value of books. We do so because we believe that they are good, possessed of enormous variety and usefulness, worthy of cherishing and keeping free. We realize that the application of these propositions may mean the dissemination of ideas and manners of expression that are repugnant to many persons. We do not state these propositions in the comfortable belief that what people read is unimportant. We believe rather that what people read is deeply important; that ideas can be dangerous; but that the suppression of ideas is fatal to a democratic society. Freedom itself is a dangerous way of life, but it is ours.

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